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**POLITICAL LIBERALISM AND ITS INTERNAL CRITIQUES:
FEMINIST THEORY, COMMUNITARIANISM, AND REPUBLICANISM**

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by

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Dissertation

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To my girlfriends,
including my mother,
my sisters, and my aunt Marilú,
for their unconditional love and support.

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Political Liberalism and Its Internal Critiques: Feminist Theory, Communitarianism, and Republicanism

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John Rawls's political liberalism has shaped contemporary political philosophy. Three other theories, feminism, republicanism, and communitarianism, devote a good deal of space to refuting Rawls's theory, and claim to be superior alternatives to it. My main thesis is that they are not alternatives to Rawls's political liberalism but variations of it. That is, although these theories present themselves as external critiques of liberalism, they are ultimately internal critiques, because their own theories are built upon the basic principles of liberalism. This is not to deny that many of their criticisms are well-taken and thus need to be addressed by liberal theorists.

I also argue that Rawls's theory of political liberalism is in general terms correct. It needs however to be revised in order to solve what I take to be its main problem: Its lack of a foundation. In my dissertation I propose a revised version of political liberalism, which includes an argument in support of the political liberal conception of justice.

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Chapter 1

Rawls's Political Liberalism and Its Foundation

1. Introduction

John Rawls's liberalism has shaped contemporary political philosophy. Liberalism is built upon the modern ideals of freedom and equality.¹ Rawls's liberalism was initially presented in *A Theory of Justice*, where it was developed as a comprehensive theory.² While TJ's liberalism proposed principles of justice that regulate what Rawls calls "society's basic structure," it was comprehensive insofar individuals were required to endorse this conception of justice as a doctrine that articulates their views about all aspects of the good life, not just political ones. Later, however, Rawls changed the scope of his theory, thereby introducing significant modifications. In PL Rawls's theory is no longer comprehensive but strictly political. Political liberalism is developed as an answer to the question "How is it possible for people holding different and irreconcilable comprehensive doctrines to live under one political regime which all of them consider legitimate?" (PL, 12). Rawls argues that citizens converge on a political conception of justice that will govern their political life. However, no agreement is necessary on how to lead a good life. Rawls envisions a consensus that is strictly political and thus covers "constitutional essentials and matters of basic justice."

In this chapter I want to present Rawls's political liberalism. I shall start by

¹ "a liberal conception combines and orders the two basic values of liberty and equality." Rawls 1996. The pages of this second introduction to *Political Liberalism* follow the first introduction in the 1993 edition, so I will refer to this as text simply as PL.

² Rawls 1971 and 1999. Hereafter referred to as TJ. Page numbers refer to the revised edition. I will only include the reference to the page numbers of the 1971 edition when it is necessary to emphasize the formulation as present in the original edition.

discussing Rawls's transition from a comprehensive liberalism in TJ to a purely political one in PL. I will show that, besides this transition, there is a second important transition in Rawls's work. After the publication of PL, he introduces modifications in his theory that have been overlooked by political philosophers. I shall argue that these modifications reveal what I consider to be political liberalism's main problem: Its lack of a foundation.

The political conception on which citizens converge needs to be justified, and Rawls intentionally avoids doing so. In PL he claims that the various comprehensive doctrines citizens hold do not *need* to justify the political conception. In still later writings there is an apparent change in his view for he maintains that comprehensive doctrines do justify the political conception. However, as I shall also argue, political liberalism cannot rely on the fact that comprehensive doctrines justify the political conception. It is in fact irrelevant whether they do that work or not. An argument that is independent of the various comprehensive doctrines is needed to ground political liberalism's conception of justice.

The fact that according to political liberalism the conception of justice is not part of any comprehensive doctrine but strictly political, leads to the problem of the foundation of political liberalism. Since Rawls's comprehensive liberalism did not have this problem, one might wonder whether a return to a comprehensive theory is necessary in order to ground liberalism. Such return would constitute the abandonment of purely *political* liberalism. In my dissertation I shall argue that such return is not necessary. I shall attempt to provide a foundation for a strictly political liberal theory.

2. From Comprehensive to Political Liberalism

2.1 *A Theory of Justice's* Comprehensive Liberalism

In TJ Rawls proposes two principles of justice for which he offers a contractualist justification: Free and equal citizens would reasonably choose these principles of justice in a hypothetical situation –the “original position”— in which they do not know their position in society and hence might be the least-advantaged ones. They are behind a “veil of ignorance,” which guarantees the fairness of the chosen principles. The first principle calls for the most extensive equal basic liberties, while the second principle prescribes that inequalities should be arranged so that they provide the greatest benefit for the least advantaged.

Rawls’s theory of justice understands justice as “the first virtue of social institutions” (TJ 3). While he acknowledges that we call persons and actions “just,” he emphasizes that his theory is about “social justice” (TJ 6). The primary subject of justice is what Rawls calls “the basic structure of society,” that is, “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (TJ 6). These major institutions are the political constitution and the principal economic and social arrangements. The basic structure of society considers them together as a scheme (TJ 6).³

The primary subject of justice is the basic structure of society because of the profundity and pervasiveness of its effects. This structure contains various social positions. Being born in a particular position determines in part one’s life prospects.

³ That is, not merely as a list of institutions that are each of them internally regulated by the principles of justice. See Lloyd 1995, 1331; and Nussbaum 2003, 503. More on this in the chapter on Feminism.

There is deep inequality among these positions: Some are favored by society while others are not. More importantly, although these positions notoriously affect our initial chances in life, “they cannot possibly be justified by an appeal to the notions of merit and desert” (TJ 7). Nobody can possibly claim that he did anything to deserve to be born, say, as a healthy white male in a rich and well-educated family.

Rawls explicitly assumes for the sake of the theory that society is “well-ordered”: a “society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic institutions generally satisfy and are generally known as to satisfy these principles” (TJ 4). Although society is well-ordered, it is characterized by both an identity and a conflict of interests. Principles of justice are therefore needed to provide a way of assigning rights and duties in the basic institutions of society (TJ 4).

According to utilitarianism, the dominant theory before the publication of TJ, the benefits and burdens in society should be distributed in a way that maximizes the general utility. Rawls presents his theory as an alternative to utilitarianism (TJ 20). The benefits and burdens in society should be distributed according to principles of justice that are the object of an agreement. Utilitarianism violates considerations of justice, Rawls maintains, because it does not take seriously the differences between persons (TJ 24). It is certainly true that each individual tries to maximize her net balance of satisfaction, imposing a sacrifice on herself now for the sake of a greater advantage later. Yet we are not justified to apply the utilitarian principle to society as a whole: Why should Ann sacrifice herself for something Beth will enjoy? For utilitarianism the way the sum of satisfactions is distributed is not relevant; the correct distribution is the one that yields

maximum net sum of satisfactions. To that extent it conflates all persons into one.

More importantly, Rawls adds, “there is no reason in principle why (...) the violation of the liberty of a few might not be made right by the greater good shared by many” (TJ 23). According to Rawls,

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. (...) Therefore in a just society (...) the rights secured by justice are not subject to political bargaining or to the calculus of social interests (TJ 3-4).

The principles of justice result from a hypothetical contract. Citizens would accept them in a well-defined initial situation, which Rawls calls the “original position.” The original position is the strictly hypothetical situation in which citizens agree on the principles of justice. In the original position citizens are behind a “veil of ignorance,” that is, they do not know their own position in society and hence might be the least advantaged ones. The veil of ignorance is needed in order to guarantee fairness –thus the name of “justice as fairness.” Since citizens do not know their own position in society they cannot tailor the principles of justice to their own convenience.

Yet Rawls does not stipulate that citizens have absolutely no knowledge behind the veil of ignorance. Whereas citizens do not know their *own* socio-economic situation, race, gender, natural talents, mental and physical abilities, religion, education, philosophical views, or family background, they do have some relevant information about society which they need in order to choose principles of justice. They know what the “primary goods” are, that is, things that every person would rather have more than less of, no matter what her plan of life is. Social primary goods (also called “chief primary goods”) include wealth, liberties, rights, and opportunities. Intelligence, health, strength,

and imagination count as natural primary goods (TJ 54).

In the original position citizens act rationally and mutually disinterestedly. They choose what is rationally best for themselves and they are not required to act altruistically. The requirement that parties in the original position act mutually disinterestedly merely stipulates that they are conceived as not taking an interest in one another's interests.⁴ The requirement that they act rationally demands that they take the most effective means to their ends.

Free and equal citizens would reasonably choose two following principles of justice under this condition. The first principle calls for the most extensive equal basic liberties: "Each person is to have an equal right to the most extensive liberty compatible with a similar liberty for others" (TJ 60). The second principle states that "[s]ocial and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity" (TJ 72).

The first principle is prior to the second, which means that no violation of basic liberties is justified in order to bring about greater socio-economic equality. The second principle is however necessary in order to guarantee that basic liberties are not merely formal, but can be effectively exercised by individuals. The second principle (specifically what concerns (a) in the formulation above) is called the "difference principle." It is

⁴ "They are to presume that even their spiritual aims may be opposed, in the way that the aims of those of different religions may be opposed" (TJ 12). Rawls specifies that requiring parties not to be altruistic does not mean that they are egoistic either, "that is, individuals with only certain kinds of interests, say in wealth, prestige, and domination" (TJ 12). While this might be an odd understanding of 'egoism,' it can be said in Rawls's defense that 'altruistic' and 'egoistic' are contraries, not contradictories. Not being altruistic is therefore not equivalent to being egoistic.

meant to mitigate the impact of the “natural lottery,” that is, to compensate for the natural and social contingencies for which individuals should neither be rewarded nor penalized. While it is not a principle of redress, for it will not possibly compensate for *any* inequality in society, it achieves some of the intent of a principle of redress insofar as it meets the arbitrariness of fortune (TJ 87).

Rawls repeatedly emphasizes that the difference principle is a principle of mutual benefit. It is not supposed to benefit exclusively the worst-off but everybody in society.⁵ Thus it “expresses a conception of reciprocity” (TJ 88). Further, “it provides an interpretation of the principle of fraternity” (TJ 90). Fraternity, Rawls adds, implies “a sense of civic friendship and social solidarity” (TJ 90), which complement Rawls’s claim that “the difference principle represents (...) an agreement to regard the distribution of natural talents as in some respects a *common asset* and to *share* in the greater social and economic benefits made possible by the complementarities of this distribution” (TJ 87, *my italics*).

2.2 The Problem of Stability

Rawls’s TJ assumes a “well-ordered” society.⁶ In PL Rawls claims that the idea

⁵ It is not obvious how the well-off get to benefit from the difference principle. Rawls’s discussions in TJ 87-9 and 68-72 suggest that “benefit” is understood in a very broad sense. He also seems to assume that if the bad-off improve their situation, *society as a whole* does better, thereby also benefiting the well-off, which suggests collective rather than distributive benefit. For the discussion on possible challenges to this aspect of Rawls’s egalitarian theory, see Cohen 1997, Lloyd ms. and Daniels 2003.

⁶ In PL Rawls specifies that in the well-ordered society, first, “everyone accepts, and knows that everybody else accepts, the very same principles of justice;” second, “its basic structure is publicly known, or with good reason believed, to satisfy these principles;” and third, “its citizens have a normally effective sense of justice so that they generally comply

of a well-ordered society as it appears in TJ is unrealistic (PL xvi). On the one hand, all the citizens of a well-ordered society endorse the principles of justice on the basis of what Rawls calls a “comprehensive doctrine,” which articulates all their moral, religious, and philosophical ideas.⁷ However, modern democratic societies are characterized by a pluralism of incompatible yet reasonable comprehensive doctrines. That is, such a well-ordered society in which citizens agree not only about principles of justice but also about their view of a “good life,” is inconsistent with the fact of pluralism. On the other hand, a well-ordered society is a “highly idealized concept” (PL 35) “because it [the well-ordered society] is inconsistent with realizing its own principles under the best foreseeable conditions” (PL xvii).

As a solution, Rawls introduces important changes in PL. He moves from a *comprehensive* conception of justice, to a strictly *political* one. Accordingly, he introduces the idea of an overlapping consensus between a freestanding political conception of justice and reasonable comprehensive doctrines, which is meant to render his theory of justice applicable in real life. Rawls thus claims that a society that is well-ordered by a political conception of justice is thus not utopian but workable. He refers to the problem of the realization of theory as “the problem of stability.”⁸

The problem of the realization of his theory of justice, which constitutes Rawls’s with society’s basic institutions.” (PL 35)

⁷ A comprehensive doctrine “includes conceptions of what is of value in human life, and ideals of personal character, as well of ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole” (PL 13). More on this in the next section.

⁸ The concern with stability was already present in TJ, although it did not receive much attention. Stability involved “the acquisition of the sense of justice by the members of a well-ordered society” (TJ 397), and “the question of congruence, that is, whether the sense of justice coheres with the conception of our good so that both work together to uphold a just scheme” (TJ 397).

main concern in PL, is distinguished from the justification of the theory. He refers to these as conforming to two different “stages.” The first one contains the justification of principles of justice, that is, the properly normative aspects of the theory: “This first stage gives the principles of justice that specify the fair terms of cooperation among citizens and specify when a society’s basic institutions are just” (PL 133). Certainly, the principles of justice need to be on hand in order to see whether they are realizable or not.

In the second stage Rawls deals with the practical problems related to the application or realization of the theory, that is, to the question of whether the theory is “stable” or not. “The second stage (...) considers how the well-ordered democratic society of justice and fairness may establish and preserve unity and stability given the reasonable pluralism characteristic of it” (PL 133-134). He adds, “the problem of stability for a democratic society requires that its political conception can be the focus of an overlapping consensus of reasonable doctrines that can support a constitutional regime” (PL 65). Besides the overlapping consensus, stability involves also questions of moral psychology: Whether citizens growing up within a just society will acquire the sense of justice necessary to comply with the principles of justice (PL 141).

In PL Rawls does not abandon his theory of justice as fairness but merely reduces its scope.⁹ The political conception that constitutes the focus of the overlapping consensus is justice as fairness as developed in TJ.¹⁰ In TJ the principles of justice that

⁹ Says Rawls, “the distinction between political conceptions of justice and other moral conceptions is a matter of scope: that is, the range of subjects to which a conception applies, and the wider the content a wider range requires” (PL 175).

¹⁰ Rawls certainly considers the possibility that the focus of the overlapping consensus be less specific: “a class of liberal conceptions that vary within a certain more or less narrow range” (PL 164). He however considers justice as fairness the standard example for the political conception of justice (PL 164). See also PL 167-8.

constitute the political conception of justice were certainly applied at the level of society's basic structure. However, in TJ it was presupposed that citizens endorse this conception of justice as a comprehensive doctrine that articulates their views about the good life. Thus TJ is a theory of comprehensive liberalism. In PL Rawls proposes that citizens might endorse the conception of justice for political issues without necessarily endorsing it for the non-political aspects of their life.

3. Political Liberalism

3.1 The Overlapping Consensus

In PL Rawls proposes that the political conception of justice is “freestanding,” that is, not presented as derived from, or as part of, any of the “comprehensive doctrines” that articulate the citizens’ various moral, religious, and philosophical ideas. A comprehensive doctrine “includes conceptions of what is of value in human life, and ideals of personal character, as well of ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole” (PL 13). Comprehensive doctrines are not necessarily personal but often social. They are frequently based on religious or philosophical views that are not strictly personal, although they admit personal variations.

Rawls argues for an “overlapping consensus” on the political conception of justice among these comprehensive doctrines. As a result of this, Rawls’s political liberalism encompasses a distinction between the political realm –ruled by the political conception of justice— and the non-political realm –informed by various diverse comprehensive

doctrines. This distinction makes it possible for Rawls to preserve freedom with respect to non-political issues that fall beyond the scope of justice, while still justifying legitimate political power regarding political matters. Furthermore, it is because of this distinction that Rawls's liberalism is *political*, as opposed to *comprehensive*. In order to be (politically) liberal, one is not required to hold any particular (liberal or otherwise) set of values to rule one's non-political life. Only commitment to a liberal *political* conception of justice is necessary.

The political and the non-political realm have frequently been referred to as 'the public' and 'the private.'¹¹ Since Rawls restricts the application of the conception of justice to the essentially political issues, the public in the Rawlsian sense corresponds only to the political aspect of public life. Everything else, which he in fact calls the non-public, is 'private' in an artificially broad sense. In Rawls's framework what is called 'the private' thus covers both the social and the personal. Historically, liberals wanted to draw a distinction between society and politics. They saw society as the realm for free association, as opposed to the necessary association through the state: "The liberal ideal of private life was not to protect the individual from society but to free society from political interference."¹² According to this understanding, a large part of the "private" is the social. But the "private" has also been seen as the personal,

¹¹ See chapter on Feminism.

¹² Kymlicka 1990, 252.

intimate realm, which is opposed not just to the political but also to the social world.¹³

Although the conception of justice is strictly political, it “is affirmed as a moral conception and citizens are ready to act from it on moral grounds” (PL 168). Citizens support it for its own sake and on its own merits (PL 147-8). The consensus is therefore stable. An overlapping consensus is different from a *modus vivendi*. In a *modus vivendi* there is only a social consensus that is founded on self- or group interests, or on the outcome of political bargaining. In a *modus vivendi* the compromise is compelled by the circumstances, so stability is contingent on them (PL 147).

An overlapping consensus is also distinguished from a constitutional consensus. In a constitutional consensus citizens accept the principles of the liberal constitution. This consensus is, however, fairly general. It does not have the depth, breadth, and specificity of an overlapping consensus (PL 164). An overlapping consensus is deeper than a constitutional consensus because it “requires its political principles and ideals be founded on a political conception of justice which includes ideas that uses fundamental ideas of society and person as illustrated by justice as fairness” (PL 164). An overlapping consensus is broader than a constitutional consensus because it “goes beyond political principles instituting democratic procedures to include principles covering the basic structure as a whole” (PL 164). Finally, an overlapping consensus is more specific than a constitutional consensus because its focus is a particular conception of justice, which is elaborated from the central ideas of society as a fair system of cooperation and the conception of the person as free and equal (PL 167).

¹³ This understanding was suggested by romantics, who thought that the political sphere included the social sphere.

The political conception of justice that is the focus of the overlapping consensus yields an agreement about strictly political issues, to which Rawls refers as “constitutional essentials and questions of basic justice,” that is, about the general structure of the government and the political process, and the equal basic rights and liberties of citizens (PL 228). This initial agreement is however insufficient to settle all fundamental political questions: Such agreement is consistent with a broad range of alternatives. First, the political conception is still fairly general and includes notions that are susceptible of being interpreted in different ways. Second, in order to implement actual policies based on the political conception it is necessary to discern what they entail for specific cases and circumstances. Third, the citizens’ different comprehensive doctrines might result in conflicting interpretations of the political conception or even conflict with what the political conception itself stipulates. The political conception thus needs to be supplemented by a view of public reason that guides public political discussion.

Citizens honor the idea of public reason when they bring their reason into agreement with that of others, thereby adopting a common point of view for settling the terms of their political life.¹⁴ When engaged in public reasoning, citizens cannot include reasons of their comprehensive doctrines but only of the political conception. Non-public

¹⁴ This does not mean to suggest that the political conception of justice always lead to the same conclusion, or that the satisfactory use of public reason necessarily guarantees agreement. See Rawls 1997 (hereafter IPRR), 797-8. In fact, the set of ideas and values that conform our public reason and thus are consistent with the liberal principles of justice are not necessary consistent among themselves. They are ideas on which we can expect others to agree, and not ideas on which every citizen will necessarily agree. They constitute the basis of our political reasoning even if not all citizens will actually endorse all of them. To that extent, they represent the scope of our democratic disagreement on fundamental political questions, while certainly not on all the non-political questions.

reasons coming from our specific comprehensive doctrines have to be left aside because we cannot expect others to agree with them. We can certainly engage in different types of discussion on fundamental political issues: *Qua* members of a cultural tradition, believers of a particular religion, or supporters of philosophical conceptions people do appeal to non-public reasons. These other debates mark vigorous democracies and, far from meaning to impede them, public reason encourages them as long as they are pursued in the proper forums.

The idea of public reason, just like the political conception of justice, is not applied to *all* political discussions, but only to those in which “constitutional essentials and matters of basic justice” are at stake. Rawls clarifies that in the following way:

Constitutional essentials concern questions about what political rights and liberties, say, may reasonably be included in a written constitution, when assuming the constitution may be interpreted by a supreme court, or some similar body. Matters of basic justice relate to the basic structure of society and so would concern questions of basic economic and social justice *and other things not covered by the constitution*” (IPRR 767 n.7, my emphasis)¹⁵.

Issues like abortion and assisted suicide constitute examples of fundamental political questions to which public reason applies insofar they deal with political rights and liberties. However, as highlighted in the quote above, there is not a precise definition of the topics public reason is concerned with. Rawls gives as an example the ques-

¹⁵ Rawls is following what he had presented in PL 227-8.

tion of school prayer (IPRR 794-5), while it is not evident that it counts as constitutional essential or matter of basic justice. He notes about this example that

it brings out that the idea of public reason is not a view about specific political institutions or policies. Rather, it is a view about the kind of reasons on which citizens are to rest their political cases in making their political justifications to one another when they support laws and policies that invoke the coercive powers of government concerning fundamental political questions (IPRR 795).

In this particular case, he adds, what is at stake are the principles that support the separation of church and state. To that extent, that would be a legitimate topic for public reason insofar as it concerns basic political rights and liberties, like the right free and equal citizens have to choose their own (reasonable) religious views.

The public political forum, as also specified by Rawls, includes the discourses of judges in their decisions (especially in the Supreme Court), government officials (especially chief executives and legislators), and candidates for public office and their campaign managers in their public political statements.¹⁶ Citizens can, however, also realize the ideal of public reason if they carry out the discussion of fundamental political questions as if they were legislators, who appeal only to shared ideas.¹⁷

The claim that the comprehensive doctrines and the conception of justice constitute two distinct spheres, which grounds the overlapping consensus, is undoubtedly

¹⁶ As explained in IPRR 767-8.

¹⁷ See IPRR 769. Certainly, legislators might deal with issues that are not strictly political in the Rawlsian sense, that is, that are not “constitutional essentials and matters of basic justice.” Rawls refers to legislators to illustrate *how* public reason ought to be conducted, and not *about which topics* it applies.

the most disputed thesis of Rawls's PL. It certainly rests on a number of complex claims that need to be analyzed more carefully. For instance, how can the spheres be distinct? To what extent are they related and why? To what extent is the political conception freestanding? What type of relationship(s) between the comprehensive doctrines and the political conception of justice does an overlapping consensus stipulate? In order to answer these questions it is necessary to say more about how the liberal political conception of justice constitutes the focus of the overlapping consensus. To what are people who hold different comprehensive doctrines expected to agree within political liberalism? What characterizes the comprehensive doctrines that overlap with the political conception of justice?

3.2 The Reasonable

The political conception of justice that Rawls is putting forward is not meant to overlap with all conceivable comprehensive doctrines but only with "reasonable comprehensive doctrines." The notions of freedom and equality of all citizens, as well as the willingness to come up with fair terms of social cooperation, are characteristic of reasonable comprehensive doctrines. Rawls does not offer a precise definition of 'reasonable.' In general, he limits himself to presenting examples of reasonable (or unreasonable) comprehensive doctrines. Examples of unreasonable comprehensive doctrines are doctrines that deny the equal value of each individual, denying some political rights to an ethnic or social group; or restrict the freedom of, say, women to participate in political issues; or attempt to use the state's power and resources to advance one particular religious view.

Yet it seems that a more precise definition of ‘reasonable’ (as well as ‘unreasonable’) is needed.¹⁸ It has however been suggested that ‘reasonable’ cannot be defined beforehand, but only revealed by its uses: “Rawls contends that proceeding in this way is necessary, since ‘the content of the reasonable’ can only be ‘specified by the content of a reasonable political conception’ of justice.”¹⁹ First, it is not clear to me why the latter prevents us from offering a more specific definition of the reasonable. Second, it seems to me that spelling out a definition for the ‘reasonable’ spotlights some ambiguities that Rawls should have avoided.

Certainly, comprehensive doctrines that are considered reasonable are the ones that “fit” with the liberal conception of justice, that is, the ones with which conception of justice can overlap. In more specific terms: A comprehensive doctrine is reasonable if and only if it can endorse the political conception of justice Rawls is putting forward. Furthermore, persons are reasonable if and only if they only affirm reasonable comprehensive doctrines. The liberal political conception of justice is thus the criteria to determine whether a comprehensive doctrine (or a person) is reasonable or not.²⁰ Besides, conceptions of justice are also characterized as reasonable or not reasonable. What makes a conception of justice reasonable? Since comprehensive doctrines are reasonable if they endorse a *liberal political* conception of justice, it seems that conceptions of justice will be reasonable if they are politically liberal in the sense Rawls is putting forward. If that is

¹⁸ The ‘unreasonable’ is presented by Rawls as what is properly not reasonable. This pair of contraries is systematically used as contradictories in PL.

¹⁹ Freeman (2003, 31), quoting PL 94, and explicitly following Burton Deben (2003).

²⁰ Rawls emphasizes that, as opposed to rational intuitionism, political liberalism does not refer to the doctrines that endorse its conception of justice as ‘true’ but merely as ‘reasonable.’ An essential feature of political liberalism is the fact that the political conception does without the concept of truth.

the case, it is not clear why Rawls introduces the idea of the ‘reasonable,’ since it seems to do no more work than ‘liberal’ does. Rawls’s claim that political liberalism provides “the *most* reasonable conception of justice” (PL 95, my emphasis), suggests that only political liberalism is reasonable. So it is helpful to clarify what is meant by politically liberal, for which it will be necessary to examine Rawls’s liberal political conception.

In later writings Rawls characterizes the main features of reasonable political conceptions in the following way²¹:

First, a list of certain basic rights, liberties, and opportunities (such as those familiar from constitutional regimes);
Second, an assignment of special priority to those rights, liberties, and opportunities, especially with respect to the claims of the general good and perfectionist values; and
Third, measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms (IPRR 774).²²

For political liberalism, the commitment to the political conception of justice is as essential as the citizen’s willingness to give priority to this conception when it conflicts with what their comprehensive doctrines stipulate. In a nutshell, being politically liberal requires, first, holding the political conception and, second, committing oneself to what is referred to as “the priority of the right over the good.”

3.3 The Priority of the Right Over the Good

²¹ These features of reasonable political conceptions could well be used to characterize liberal political conceptions. Surprisingly, Rawls says the following in the sentence immediately following the fragment quoted: “Each of these *liberalisms* endorses the underlying ideas of citizens as free and equal persons and of society as a fair system of co-operation over time.” (IPRR 774, my emphasis). It seems to me that “reasonable” and “(politically) liberal” are ultimately synonyms.

²² He also says that “the basic requirement is that a reasonable doctrine accepts a constitutional democratic regime and its companion idea of legitimate law.” (IPRR 766)

Rawls states that “the priority of the right means that the principles of political justice impose limits on permissible ways of life, and hence the claims citizens make to pursue ends that transgress those limits have no weight” (PL 174). This means that, on the one hand, some comprehensive doctrines or some particular actions stipulated by a comprehensive doctrine will be deemed as unacceptable (“unreasonable”²³) and thus be prohibited. Certainly, the political conception is meant to rule only our political life while the comprehensive doctrines rule our non-political life. However, since the political conception (“the right”) has priority over the different conceptions of the good embodied in the comprehensive doctrines, it has the power to exclude certain comprehensive doctrines even if citizens follow them only in the non-political realm. In other words, John cannot enslave Ann in the private realm for it violates Ann’s basic rights. The fact that the action occurs in the privacy of their home is irrelevant. While the political conception is referred to as “neutral” with respect to comprehensive doctrines or ideas of the good, it is not neutral with respect to all of them, but only with respect to the ones that are acceptable from the perspective of the political conception.

On the other hand, the priority of the right over the good stipulates that the political conception of justice expresses values that normally outweigh whatever other values are likely to conflict with them. That is possible, Rawls argues, because “political values are *very great values* and hence not easily overridden: these values govern the basic framework of social life –the very groundwork of our existence— and

²³ I think we could also call them “illiberal.”

specify the fundamental terms of political and social cooperation” (PL 139, my emphasis). This justification, however, begs the question: It does not say *why* political values are very great values. Moreover, for many people religious values are also “very great values” and thus not easily overridden. Religious values might appeal to ideas like eternal life or condemnation, which can be seen as having priority over other everyday aspects of our existence.

Rawls adds,

the history of religion and philosophy shows that there are many reasonable ways in which the wider realm of values can be understood so as to be either congruent with, or supportive of, or else not in conflict with, the values appropriate to the special domain of the political conception of justice (PL 140).

Yet this amounts only to the idea that it has been in fact possible for comprehensive doctrines to support, agree with, or at least not to conflict with, the political conception of justice. However, that does not explain why the political values outweigh the non-political ones. The fact that history shows us that certain things were possible in the past does not mean that they have to be that way. It is not even the case that things were always that way –there are plenty of exceptions. So why do the values expressed in the political conception of justice prevail over other values?

Says Rawls, “The values that conflict with the political conception of justice and its sustaining virtues may be normally outweighed because they come into conflict with the very conditions that make fair social cooperation possible on a footing of mutual

respect” (PL 157). Indeed, a strictly political (as opposed to comprehensive) conception of justice was introduced because contemporary democratic societies are characterized by a plurality of reasonable comprehensive doctrines (what Rawls calls “the fact of reasonable pluralism”). A political conception of justice is adopted in order to avoid conflict among competing conceptions of the good in general thereby making a stable government possible. The priority of the right over the good is a sort of corollary of adopting the political conception of justice. The point of adopting the political conception is precisely to subordinate the competing conceptions of the good to it. The whole purpose of having a *political* conception of justice is to justify subordinating comprehensive doctrines to it in a case of competing claims.

This argument might be trivial but is not thus wrong. It might however mistakenly suggest that there is a merely pragmatic reason supporting the priority of the right over the good, and ultimately, the political conception of justice that gives rise to such priority. While this position is incompatible with Rawls’s claim that “the ideas of the domain of the political and a political conception of justice are normative and moral ideas are normative and moral ideas in their own right” (PL xxxviii), it is also suggested by other aspects of Rawls’s theory, which I will discuss in section 4 of this chapter.

It is worth emphasizing that the idea of the priority of the right over the good does not imply that political liberalism does not presuppose *any* notion of the good. Says Rawls, “This must be incorrect, since the right and the good are complementary: no conception of justice can draw entirely upon one or the other, but must combine both in a definite way” (PL 173). In fact the political conception of justice incorporates five substantive ideas of the good: “a) the idea of goodness as rationality; b) the idea of

primary goods; c) the idea of permissible comprehensive conceptions of the good (those associated with comprehensive doctrines); d) the idea of the political virtues; and e) the idea of the good of the well ordered society” (PL 176). The first two were already present in TJ. These five ideas of the good constitute political values insofar they do not require the endorsement of any particular comprehensive doctrine.

3.4 The Relationship between the Political Conception and the Comprehensive Doctrines

The priority of the right over the good does not imply that there is no relationship between the conception of justice and the comprehensive doctrines. Rawls certainly introduces the political conception of justice as a freestanding view, that is, as independent from the comprehensive doctrines. However, he indicates that there is some relationship between the comprehensive doctrines and the political conception of justice: “we clearly imply some relation between political and non-political values” (PL 138). “As an account of political values,” Rawls adds, “a freestanding political conception does not (...) say that political values are separate from, or discontinuous with, other values” (PL10). More specifically, he adds that “citizens individually decide for themselves in what way the public political conception all affirm is related to their own more comprehensive views” (PL 38). The political conception is thus presented as a sort of module that fits into the comprehensive doctrines.²⁴ Whether or not this implies that the

²⁴ “the political conception is a module, an essential constituent part, that in different ways fits into and *can* be supported by various reasonable comprehensive doctrines that endure in the society regulated by it” (PL 144-5, my emphasis).

political conception of justice is or is not actually freestanding²⁵, we can ask why Rawls thinks that there needs to be some type of relationship between the political and the non-political sphere in the first place.

Rawls maintains that the comprehensive doctrines can be a useful foundation for the political conception. He claims that the political conception “*can* be supported by various reasonable comprehensive doctrines” (PL 12, my emphasis). He adds, “While we *want* a political conception to have a justification by reference to one or more comprehensive doctrines, it is neither presented as, nor as derived from, such a doctrine applied to the basic structure of society” (PL12, my emphasis, too). However, the key question is not whether such a political conception *can* be supported, or whether we might *desire* such support, but whether that support is *needed* or not. In other passages he states that “In such a consensus, the reasonable doctrines endorse the political conception, each from its point of view” (PL 134); and “All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides” (PL 147).²⁶ It seems then that the political conception of justice needs to be supported by the different comprehensive doctrines. Yet why is such support necessary?

In PL’s first lecture, Rawls states that citizens have both political and non-political aims and commitments, based on the political conception of justice and their comprehensive doctrines, respectively. He adds, “These two kinds of commitments and

²⁵ I will explicitly discuss this issue later.

²⁶ Rawls adds: “It is left to the citizens individually –as part of liberty of conscience– to settle how they think the values of the political domain are related to other values in their comprehensive doctrine” (PL 140).

attachments –political and non-political— specify moral identity and give shape to a person’s life, what one sees oneself as doing and trying to accomplish in the social world” (PL 31). Furthermore, he explicitly states that “These two aspects of their moral identity citizens must *adjust and reconcile*” (PL 31, my emphasis). Thus, it is for the sake of the coherence of our moral identity that there should be some particular relationship between the political conception of justice and the comprehensive doctrines. Yet this does not stipulate that the comprehensive doctrines need to offer support or justification to the political conception of justice, but merely that there is no conflict between both.

In fact, in PL’s fourth lecture, which is devoted to the overlapping consensus, Rawls considers three different ways in which the political conception of justice relates to comprehensive doctrines: “there are many reasonable comprehensive doctrines that understand the wider realm of values to be (a) *congruent with*, or (b) *supportive of*, or else (c) *not in conflict with*, political values as these are specified by a political conception of justice for a democratic regime” (PL 169, my emphasis).²⁷ Thus it is only required that the comprehensive doctrines be compatible with the political conception: “When an overlapping consensus supports the political conception, this conception is *not* viewed as *incompatible* with basic religious, philosophical, and moral values” (PL 157, my emphasis).²⁸

²⁷. Also: “the history of religion and philosophy shows that there are many reasonable ways in which the wider realm of values can be understood so as to be either (a) *congruent with*, or (b) *supportive of*, or else (c) *not in conflict with*, the values appropriate to the special domain of the political conception of justice” (PL 140).

²⁸ Also specified in the following passage: “many if not most citizens come to affirm the principles of justice incorporated into their constitution and political practice without seeing any particular connection, one way or another, between those principles and their other views” (PL 160).

Yet Rawls seems to shift from this view (1) that stipulates only that the political conception should be *not incompatible* with the comprehensive doctrines, and thus (a), (b), and (c) can be the case, to the view (2) that the comprehensive doctrines *need to ground* the political conception, making (b) the only possible case, as suggested in previous quotations. If the latter is the case, it is not clear to what extent the political conception is freestanding given that it does need to be grounded on comprehensive doctrines. It seems that it can still be claimed that it is freestanding in the sense that it can be supported by arguments that are independent from the ones coming from particular comprehensive doctrines. However, as I will show later, Rawls himself undermines this reading by refusing to present such arguments.

4. The Foundation of Political Liberalism

4.1 Rawls's Later Writings

In later writings this shift becomes evident.²⁹ Rawls seems to ignore completely his initial position, (1), thus making comprehensive doctrines more important to his theory, at least apparently.³⁰ He states: “the roots of democratic citizens’ allegiance to

²⁹ By later writings I mean the following: Rawls 1996 (referred to as Intro), IPRR, and Rawls 1999 (“*Commonweal* Interview with John Rawls,” in *Collected Papers*), hereafter CP.

³⁰ Several criticisms (mostly by feminist theorists) raised against PL focused on the fact that the distinction between political and moral views stipulated by Rawls was artificial, and, at any rate, highly problematic (see chapters on Feminist Theory and Communitarianism). Probably motivated by this, Rawls tried to emphasize the ways in which the political conception and the comprehensive doctrines do relate, thereby shifting to the view in which the comprehensive doctrines positively ground the political conception, that is (2), instead of merely being not incompatible with it as in (1). There is in fact no later mention of (a), (b), and (c) as possible ways in which comprehensive doctrines and the political conception relate to each other.

these political conceptions lie in their respective comprehensive doctrines, both religious and nonreligious” (IPRR 784-5).

This shift is confirmed by the fact that Rawls explicitly moves, after the publication of PL, to an extended view of public reason. In PL Rawls had argued that when engaged in public reasoning citizens cannot include reasons of their comprehensive doctrines but only of the political conception. Yet in his 1996 “Introduction to the Paperback Edition of *Political Liberalism*,” as well as in later pieces, he revises that position and states that “reasonable such doctrines can be introduced in public reason at any time provided that in due course public reasons, given by a reasonable conception, are presented sufficient to support whatever the comprehensive doctrines are introduced to support” (Intro li-iii). He refers to this as the proviso.³¹

This wide view of public reason presupposes a greater role attributed to the comprehensive doctrines; they ground the political conception: “It is wise, then, for all sides to introduce their comprehensive doctrines, whether religious or secular, so as to open the way for them to explain to one another *how their views do indeed support those basic political values*” (IPRR 785, my emphasis).³² Rawls explicitly states that this addition “has the further advantage of showing to other citizens the roots in our comprehensive doctrines of our allegiance to the political conception” (Intro iii).³³ However, it is not clear to what extent this is a substantive addition, since elements of comprehensive doctrines can, because of the proviso, only be introduced *qua* ideas

³¹ See also IPRR 776, and CP 619, as also quoted *infra*.

³² “We may think of the *reasonable comprehensive doctrines that support society’s reasonable political conceptions* as those conceptions’ vital social basis, giving them enduring strength and vigor” (IPRR 785, my emphasis).

³³ See also IPRR 784-5.

supported by the political conception. The mere fact that these ideas belong to particular comprehensive doctrine is thus not relevant.³⁴ Therefore, comprehensive doctrines are *only apparently* being attributed a more important role. In fact, they can be introduced into political discussion only if eventually they can be supported by public reasons.³⁵ Rawls himself acknowledges that “the introduction into public political culture of religious and secular doctrines, provided the proviso is met, does not change the nature and content of justification in public reason itself. This justification is still given in terms of a family of reasonable political conceptions of justice” (IPRR, 784). Whether this addition counts as a substantive modification of Rawls’s previous understanding of public reason or not, it does constitute evidence of a shift in which the political conception is grounded on the comprehensive doctrines.

4.2 A Freestanding Conception?

There is something counterintuitive about the fact that the political conception is

³⁴ As also clear in the following fragment: “Any comprehensive doctrine, religious or secular, can be introduced into any political argument at any time, but I argue that people who do this should also present what they believe are public reasons for their argument. So their opinion is no longer that of one particular party, but an opinion that all members of a society might reasonably agree to, not necessarily that they would agree to. What’s important is the people give the kinds of reasons that can be understood and appraised *apart from their particular comprehensive doctrine*” (CP 619, my emphasis).

³⁵ This does not mean that people are legally prohibited from making religious arguments. By avoiding religious arguments citizens fulfill their duty of civility, which “like other political rights and duties, is an intrinsically *moral* duty” (IPRR 769, my emphasis). Rawls specifies that it is not a legal duty for it would be incompatible with freedom of speech. He adds, “People can make arguments from the Bible if they want to. But I want them to see that they should also give arguments that all reasonable citizens might agree to” (CP 620). That means that citizens have also pragmatic reasons to avoid religious arguments given that others have no reason to agree with them.

grounded on various comprehensive doctrines, and yet citizens are expected not to appeal to them in public political discussions, and even to subordinate them to the political conception whenever both conflict. On the one hand, if the political conception is in fact grounded on comprehensive doctrines, it is not clear why they cannot be incorporated in public reason or why the political conception has priority over them. On the other hand, if the political conception is truly freestanding, it is not clear why it should be argued for using premises from comprehensive doctrines. If only arguments based on the political conception are acceptable, it seems that an argument for such conception could be presented that is independent of particular comprehensive doctrines. Doing so would show the political conception to be freestanding. Certainly, the fact that there is an independent argument for the political conception does not mean that there cannot be any other arguments (provided from the different comprehensive doctrines) that lead to it.

However, Rawls explicitly refuses to provide such an independent argument for the political conception. In PL, as well as in later writings, he explicitly claims to avoid such discussion.³⁶ This position, which certainly is consistent with Rawls's attempt at making the comprehensive doctrines more relevant within his theory, is inconsistent with the view that citizens cannot appeal to the doctrines that ground the political conception when engaging in public reasoning. Precisely because they should limit themselves to the political conception, it is necessary for Rawls to clarify as much as possible the argument supporting it. Yet, as I shall argue, Rawls's refusal to offer an argument for the political

³⁶ In CP 621-2 Rawls states: "Citizens can have their own grounding [for a liberal political conception] in their comprehensive doctrines, whatever they happen to be. I make a point in *Political Liberalism* of really not discussing anything, as far as I can help it, that will put me at odds with any theologian, or any philosopher."

conception is highly problematic for reasons other than this inconsistency.

Why does Rawls refuse to ground the political conception on arguments other than the ones coming from the various particular comprehensive doctrines? “I don’t really need them and they would cause division from the start,” he states (CP 621). This “practical” reason coheres with his main concern, in PL, of working on a theory that, unlike the one in TJ, is not utopian but whose principles are realizable, and properly focusing on the realization—rather than on the justification—of the theory. In PL Rawls’s focus is the application or realization of the theory. He thus refuses to provide an argument for the political conception of justice and relies on the various comprehensive doctrines for that sake. The political conception itself is taken for granted in order to focus on the stability, which is seen as possible given the distinction between the two stages.

4.3 The Problem of Foundation

Although Rawls claims that the justification and the realization of the theory constitute different stages, it is not clear to what extent this is true. It has been observed, mainly by Jürgen Habermas, that this distinction is not just artificial, but mistaken.³⁷ For instance, it seems that issues that Rawls claims belong to the second stage, such as the overlapping consensus (PL 65), in fact seem to be essential to the first stage, to what properly constitutes the “theory.” The same can be said about the complex notion of “the reasonable” which according to Rawls also belongs to the second stage, that is, to the realizability of the theory. However, if the overlapping consensus and the concept of the

³⁷ Habermas 1995. Also included, with Rawls’s reply to it, in the 1996 edition of PL.

“reasonable” are not elements of the justification of the theory but of its application, it could be questioned to what extent they can be used to refute other theoretical approaches, for instance, showing that political liberalism rejects sexist or discriminatory comprehensive doctrines because they are unreasonable. It is certainly not obvious that the realization and thus the stability of the theory should be seen as independent from its justification. If Rawls claims that these do belong to two different stages, then, first, it seems that the burden of the proof is on him. Second, it is clear that a modified version of his theory that can achieve the same goal without introducing such disputed distinction is preferable.

I want to argue that it makes more sense to relate the realization of the theory to its justification. That means denying the distinction (between stages) that allows Rawls to avoid providing a justification for the political conception. Such justification would be needed because Rawls specifies that he is interested in not just stability, but “stability for the right reasons, that is, as secured by a firm allegiance to a democratic society’s political (moral) ideals and values” (IPRR 781). The best way to guarantee such “stability for the right reasons” is by providing a clear, explicit, and sound argument for the liberal political conception that people would agree on, no matter what their comprehensive doctrines are. Since as the focus of an overlapping consensus the political conception is a view that is reasonable for all people, it seems rather obvious that it should be possible to provide an argument for it that does not rely on the various comprehensive doctrines. Since the political conception of justice is presented by Rawls as a normative and moral idea *in its own right* and that has its intrinsic own ideal, principles, and standards (Intro xxxviii, xlv), it seems that it should be possible to justify

it using premises that are independent from the particular comprehensive doctrines and thus acceptable to all. Although Rawls often wants to attribute central importance to comprehensive doctrines, they are not needed to ground political liberalism.

The most problematic aspect of not having an independent argument for the political conception is that there is no reason to believe that the political conception is in fact a normatively correct one, as opposed to one that people happened accidentally to agree on as a result of historical coincidences and whose perpetuation we are now trying to secure.³⁸ If the political conception is meant to be the object of a *principled* agreement, and not the result of a “happy coincidence,” it needs to be possible to ground it on explicit arguments, which are themselves sound and open to scrutiny, instead of avoiding its justification. Rawls states, “I am concerned about the survival, historically, of constitutional democracy” (CP 616). Yet if that is a valuable project it is because there is (at least one) good argument for constitutional democracy, and not merely because it is good to perpetuate whatever political conception or regime citizens happen to agree on.³⁹ Yet Rawls acknowledges in CP 620-1 that he gives historical and

³⁸ I am not thereby objecting that we merely have what Rawls calls a *modus vivendi* as opposed to an overlapping consensus, because people can wholeheartedly agree on a conception that is normatively wrong, as opposed to just merely tolerate it for the sake of convenience as in a *modus vivendi* (see PL 147).

³⁹ Further, it seems that such argument is particularly necessary given that Rawls himself repeatedly states that “a diversity of reasonable religious, philosophical, and moral comprehensive doctrines found in democratic societies is a permanent feature of the public culture and not a mere historical condition soon to pass away. (PL 216-7, and also 36 and 136).

not theoretical support for his theory. Working on the realization of a conception is justified by its being supported by good arguments. As regards the realization of political liberalism political philosophy has no function other than justifying it.

Ultimately, what role do comprehensive doctrines play within political liberalism? They seem to be fifth wheels. It is imperative to develop an argument for the political conception that is clearly independent from the various comprehensive doctrines. Such an argument cannot be taken for granted or avoided simply because one wants to focus on the realization of liberalism, as opposed to its justification. It should appeal to universal facts about human nature –humans are free and equal— and not be grounded on any particular comprehensive doctrines. Whether comprehensive doctrines coincide with such an argument, or provide a different argument for the political conception is irrelevant. Stability for the right reasons will be guaranteed if there is an argument for a truly freestanding political conception of justice. Therefore, comprehensive doctrines are merely expected not to be incompatible with the political conception of justice instead of to ground such conception.

Hence, what is relevant for political liberalism is certainly not the fact that comprehensive doctrines ground the political conception of justice, but rather the particular content of that political conception and the scope of the conception, that is, what makes it liberal, and what makes it political, respectively. The content is the idea that all people are equal and have equal right to freedom. From this content their basic rights can be derived. The scope is the political, which is the realm governed by this liberal conception, and on which such a conception has priority over any comprehensive

doctrines.

Chapter 2

The Feminist Critique

Most feminist theorists see political liberalism as the “enemy.” But something seems to be at odds with this, for feminism initially appealed to liberalism in order to further its claims for equality. Feminism was in many cases presented as an extension of the liberal project. What is it about political liberalism that is problematic for feminist theory and why? Can feminist theory in fact “do away” with political liberalism, as is continuously suggested?

Feminist theorists critique both the liberal design and the assumptions of political liberalism. Critiques of the design, which aim to modifying liberalism, are internal critiques. Critiques of the assumptions, which reject of liberalism, are external. Some of the internal critiques are ungrounded and based on misinterpretation of key liberal concepts, while others can be accommodated by revising the liberal framework, as some feminists also acknowledge.⁴⁰ In contrast, the external criticisms, which are presented as a sort of definitive challenge to liberalism, are unsuccessful. They themselves implicitly rely on some key liberal assumptions, which shows that they are ultimately internal critiques. I am not referring to internal critiques in a pejorative way.

⁴⁰ See Benhabib and Cornell 1987, Introduction; as well as Kymlicka 1990.

Nor I am trying to suggest that liberalism has attended to or resolved all the valuable critiques raised by feminism. My primary aim in this chapter is merely to show that the feminist critiques remain within a liberal framework.⁴¹

Feminists who raise either internal or external critiques also claim that liberal theory is incompatible with current facts about gender. I shall call these “inefficacy critiques.” As my secondary aim I shall show that this critique of liberalism relies on a misunderstanding of the distinction between normative and descriptive claims. Once again, it turns out that liberalism does more feminist work than feminist theorists acknowledge.⁴²

1. Internal Critiques

1.1 Rejecting Sexism

Many feminist criticisms of political liberalism in general, and of Rawls’s proposal in particular, aim at restructuring political liberalism’s design, in particular its problematic distinction between the public and the private. Feminists use the word

⁴¹ This does not attempt to be an exhaustive account of *all* feminist critiques to liberalism. I am just presenting a summary of what I take to be the main critiques to the liberal project.

⁴² As part of her discussion of G.A. Cohen’s critique of Rawls, Sharon Lloyd has also argued that Rawls’s theory is less subject to the feminist critique of liberalism than is generally supposed. Lloyd ms.

‘private’ to refer to what Rawls means by the non-political. I will therefore use that term to denote both the personal and the social life, which is private in an artificially broad sense.⁴³ The most prominent critique raised by feminists is that although political liberalism rejects public sexism, it still allows for women’s discrimination in the private sphere. Feminism is one among many possible comprehensive doctrines that can be accommodated in liberalism, just as sexist views can be accommodated as well. Thus private sexist views and practices cannot be rejected on the ground that they are unjust, because justice is a specifically *political* virtue and should not be predicated of non-political institutions and practices. As comprehensive doctrines that rule our private life, feminist and sexist views are “equally good” from a political perspective which aims at neutrality with respect to the various conceptions of good life. This position, allegedly supported by Rawls’s liberalism, has understandably infuriated *most* feminists.

The initial question is whether Rawls can refuse to accommodate sexist

⁴³ See first chapter, section on the ‘overlapping consensus.’ The distinction between the private and the public realm is also referred to as corresponding to the moral and the political, respectively, although the concepts “political” and “public” do not coincide with those of “moral” and “private,” respectively. On the one hand, not everything that is public is political, e.g. most corporations and social clubs. On the other hand, morality is often not seen as a private (or merely personal) thing. Moreover, distinguishing between the political and the moral does not deny the fact that the political conception of justice is itself a normative and moral view, as specified in Rawls 1996, *passim*.

comprehensive doctrines in political liberalism's scheme. As I already mentioned, Rawls argues that the liberal political conception of justice only overlaps with "reasonable comprehensive doctrines." Hence if it can be claimed that sexist views constitute unreasonable comprehensive doctrines, they have no place in a liberal framework. Okin thinks that this is possible (1994, 23-43) and I agree with her. It seems to be a matter of common sense that sexist views are unreasonable.

But what does Rawls mean by "unreasonable"? It is certainly true that Rawls is markedly vague with respect to this and other key notions. At any rate, reasonableness is systematically associated with the ideas of freedom and equality of *all* citizens, as well as the willingness to come up with fair terms of social cooperation. Therefore, since sexism endorses gender *inequality*, it is unreasonable. According to Sharon Lloyd, for a doctrine to be unreasonable it needs to use the state's power to deprive other citizens from their rights and liberties. Since most sexist views do not even attempt to use the state's power or any political resource to further their interests, they are not unreasonable, Lloyd claims (1995, 1322-1323). However, she is misreading Rawls. It is true that one of the paradigmatic cases of unreasonableness according to Rawls is one in which you make use of the political resources to advance your view. But he never restricts unreasonable doctrines to that type of case. Lloyd is in effect

taking an example as a definition. Her mistake may have been caused by the fact that Rawls himself does not offer a clear-cut definition of reasonableness.⁴⁴

1.2 “The Personal Is Political”

At any rate, political liberalism’s distinction between the public and private spheres is a problem. Feminist theorists often objected with the slogan “the personal is political.” The objection is that, *pace* political liberalism, the personal should not fall outside the scope of justice. Justice should apply to the family. According to political liberalism, justice is a political virtue and the family is a non-political (meaning private) institution. The feminists object that the personal (for instance, relationships within the family) is political (a locus of injustice). It seems obvious that the fight for gender equality must go beyond devaluation and discrimination of women in the public sphere to the patterns of domestic labor and women’s devaluation in the private sphere. Since it is women who mostly suffer in the private sphere, and it is not possible for them to appeal to justice in that realm, inequality is at the very root of the public/private distinction. The fact that there is such a distinction is problematic for women, not for

⁴⁴ In PL 196 Rawls explicitly refers to this case of unreasonableness as an *example*. Samuel Freeman also observes that, instead of defining the concepts of reasonable and unreasonable, Rawls often merely provides examples. Freeman 2003, 31.

men. Since women are more likely to experience its negative consequences, the distinction itself entails inequality. This led feminists like Carole Pateman to claim that “[t]he dichotomy between the public and the private (...) is ultimately what the feminist movement is all about” (1987, 103).

Put in other terms, if we accept Rawls’s private/public distinction, and his consequent claim that justice only applies to the public realm, it seems that we cannot claim that there is *injustice* in the private sphere. There cannot be (political) injustice because there cannot possibly be justice in the first place. “Just” is not a proper attribute of relationships in this realm. That is not meant to deny that there can be (and certainly are) various non-desirable behaviors and attitudes in the private space. But, according to his distinction of spheres, Rawls would call them *non-just*, which in the eyes of most feminists condones sexist private practices. However, Rawls’s refusal to refer to justice in the private sphere can also be understood differently. It can actually be considered consistent with the feminist claims that I will review in the next section, namely, that justice is an insufficient concept to characterize what is desirable within personal relationships. For instance, wives do not expect their husband to treat them only “justly,” that is, in the way he would treat a citizen. A wife in fact expects something different: She asks for love and care.⁴⁵

⁴⁵ As I argue in section 2.2 in this chapter, justice can be insufficient to depict desirable

An issue that has been particularly confusing is Rawls's claim that families are *in some sense* part of society's basic structure, which is regulated by the political conception of justice (PL 258, TJ 7). Rawls's rationale for including the "nature of the family" within the basic structure of society is that institutions belonging to the latter "have deep and long-term social effects and in fundamental ways shape citizen's character and aims, the kinds of persons they are and aspire to be" (PL 68). Thus families should be *to some extent* just. Yet, Susan Okin asks: "How can families be both part of the basic structure and not political?" (1994, 26)

Sharon Lloyd carefully analyzes in which sense families can be just for Rawls (1995, 1324-1332).⁴⁶ She argues that "the constraints of a just basic structure rule out

personal relationships. Some feminists have argued that justice requires equal legal entitlement to all the earnings coming into the household. Susan Okin, in particular, proposed having employers make out wage checks equally divided between the earner and the partner that provides the unpaid domestic services (1989, 180-1). Yet this is problematic for a number of reasons. Consider this: The wife gets sick and has to pay exorbitant medical bills. Her (just) share to her husband's wage check is insufficient to pay for those bills. Should not her husband still pay for her medical bills? Would Okin say that, since the wife is entitled to half of the earnings, only that much should be spent in her medical bills? I do not think so. It is reasonable to expect the husband to assume this responsibility out of love and care, disregarding whether this action is consistent with a just division of wage checks. Justice seems to be insufficient compared with love and care. However, a weaker claim can be made, namely that love and care produce a behavior that is *at least* as good as the behavior caused by justice. John might do half the housework but not because he thinks it is just, but purely out of love and care for Anne.

⁴⁶ For a further discussion on Rawls's theory in TJ and the role of the family see Munoz-Dardé 1998. Munoz-Dardé's thesis is that, "A form of contractualism more individualistic than Rawls' would do better at addressing concerns about justice and the family raised by feminist theorists, and would also compel us to be more egalitarian" (1998, 332). Her analysis is based on the design of the original position. The family,

some family practices” (1995, 1327).⁴⁷ In fact, in political liberalism some practices within families are excluded based on the political conception of justice:

[Families] must be just as in *subject to the constraints a just basic structure imposes*. (...) Families are composed of equal citizens and future equal citizens, and the principles of justice guarantee basic rights, liberties, and fair opportunities for each of them. We could say that this requires that families be just, but it would be truer to Rawls’s meaning [...] to say that permissible family forms must not be *unjust* according to the standard of the two principles. So in this sense of family justice, Rawls will agree with the feminist that families must be just (1995, 1331).

Later, in IPRR, Rawls explicitly states that “political principles do not apply directly to its [the family’s] internal life, but they do impose essential constraints on the family” (IPRR 789). He adds, “If the so-called private sphere is alleged to be a space exempt from justice, then there is no such thing” (IPRR 791). However, since Rawls is thereby not imposing a *just* feminist doctrine within the family realm, but “merely” ruling out *unjust* practices, this only sense in which the family is for Rawls just is

she maintains, should be seen as any other form of association, and individuals in the original position should act in a truly mutually disinterested way, ignoring any concern with their descendants.

⁴⁷ This, Lloyd correctly observes, is different from the following (wrong) views: First, that families are just according to one particular feminist comprehensive doctrine that is imposed over other non-unreasonable ones, for that would be clearly illiberal. Second, that families are –as Okin suggests– just as *internally* ordered by the two principles of justice, for they are not meant to regulate each institution of the basic structure of society *individually*, but govern “*how* [society’s major political economic and social institutions] *fit together* into one unified *system* of social cooperation from one generation to the next.” Lloyd citing PL 11. See also Nussbaum 2003, 503.

considered insufficient by most feminist theorists. Yet as Lloyd acknowledges, justice in this sense does require a lot. I fail to see why Lloyd thinks that the fact that families are just in this sense is consistent with her idea that Rawls cannot reject sexist comprehensive doctrines based on their unreasonableness. Both are in my opinion sides of the same token. We get a more coherent picture of Rawls's theory once Lloyd's understanding of what makes an unreasonable comprehensive doctrine is corrected as not necessarily involving the use of the state's power for its promotion.

Several feminist theorists have focused on the more general problematic aspects of the distinction between spheres itself. Alison Jaggar observes that the liberal view of justice, which focuses on the public sphere, overshadows the respect for what is private; therefore it could be questioned whether the commitment to the public-private distinction is compatible with a genuine commitment to sexual equality.⁴⁸ However, the liberal can claim, first, that he is exclusively theorizing the public sphere. Second, as explained in the previous paragraph, he can also argue that certain inappropriate private practices can be overruled in the name of justice, appealing for instance to the idea of the individual as right-bearer, or just exclude certain "moral" views as unreasonable.⁴⁹

⁴⁸ Jaggar, Alison. 1983. *Feminist Politics and Human Nature*. Totowa NJ: Rowman and Allanheld, 199; as quoted by Kymlicka 1990, 250.

⁴⁹ Also noted by Benhabib and Cornell in their Introduction to Benhabib and Cornell 1987, 1-15.

Moreover, I want to emphasize that Rawls's commitment to eliminating inequality definitely applies to sexual inequality as well.⁵⁰ Feminist criticisms therefore demand the very same principle that Rawls endorses –equality— and validly attempt to broaden its scope of application. I have thus referred to these criticisms as internal ones. The key question then is: What changes in the theory of justice are required to eliminate injustice in the private sphere? This question has not been satisfactorily answered by liberalism.

1.3 Retracing the Boundaries

A careful examination of the *relationship* between the two spheres (which constitutes a vague point in Rawls's PL) is needed. An analysis of social, cultural, and economic practices is required to redraw the boundaries between the two spheres. Redrawing the boundaries does not mean obliterating them. It is in the best interest of feminism to keep the differentiation between spheres. As I already mentioned, “private” consists of both the social and the personal. So the *liberal* distinction is not the proper target of feminism. As feminists note, society was conceived in abstraction from domestic life, which was perceived as “women's world.” Power in society was

⁵⁰ This is evident in IPRR, 787-794.

controlled only by men. Domestic life and the activities of nurturing and care (which have been mostly performed by women) were ignored. Thus the liberal celebration of society ran parallel to an exclusion of the domestic world of women. However, as Kymlicka points out, this has unfortunately happened in the entire political spectrum, not just among liberals.⁵¹ Aristotelian philosophy, which is the antithesis of political liberalism, also downgrades the domestic sphere.⁵² So the fact that domestic life has been ignored is not necessarily tied to the liberal distinction between political and non-political sphere, at least not insofar as the private/public distinction is understood as being the social/political one.⁵³

Furthermore, if “private” is understood as the personal, the distinction is indispensable for the feminist agenda. Feminists want ultimately to protect this view of privacy but not in the traditional familiar sense, that is, not as the space of the traditional heterosexual family in which women have been generally subordinated. Instead of furthering the right of the *pater familias* to make decisions, feminists promote the *individual* right of the woman to decide by herself, even within the family

⁵¹ Kymlicka 1990, chapter 7 on Feminism.

⁵² Okin also observes that women are relegated in Aristotle’s political philosophy in 1987, 43.

⁵³ Both Anne Phillips and Zillah Eisenstein agree with his view, which seems to be implicit in Pateman’s account as well See Phillips 1987, Introduction, especially 13; and Pateman 1987.

realm. Feminist arguments with respect to abortion and reproductive matters, in general, clearly illustrate this claim. Their position thus coincides with the liberal agenda. Since feminism asks for the protection of the individual intimate space of women it can be validly considered an extension of the liberal project.⁵⁴

It can be questioned whether this aspect of the feminist agenda is consistent with the main feminist claim against political liberalism, namely “the personal is political.” On the one hand, the “the personal is political” asks for the government to “step into” private life: It should intervene in the private sphere in order to guarantee that all sexist private practices are eliminated, as evident, for instance, in feminist arguments with respect to the division of work within the household, and the policies they propose for pornography. On the other hand, the feminist commitment to the protection of women’s personal decisions demands the government to “keep out” of private life: Women have the right to be let alone to pursue their own personal plans of life, as clear in feminist views with respect to reproductive matters in which no intervention from the government can be justified. So should the government be in or out?

Feminists disagree, and some want the government to be in *and* out: They

⁵⁴ Dorothy Roberts’s article (Roberts 1995) beautifully illustrates this point. Roberts shows the need to enhance (and not to reject) the liberal view of privacy. She criticizes liberalism’s inefficacy to protect individual’s autonomy, and thus she argues for an extension of the liberal project.

appeal to different and ultimately opposing principles depending on the result that they want to achieve in each particular case, and thus are guilty of special pleading. The argument for the government stepping in uses premises that the argument for the government stepping out rejects. If one argument is sound, then the other must be unsound. It is not clear what feminists think the relationship between the private and the political should be. Therefore, it may be very difficult to accommodate all the feminist claims within political liberalism. Even if “the personal is political” asks for the extension of a principle cherished by liberalism —equality— that same extension can compromise other liberal values —personal freedom— that feminists seem to cherish as well. Perhaps this problem is related to some feminists’ proposal of entirely rejecting political liberalism, which I will examine in the next section.

Other feminists, like Iris Marion Young, who explicitly argues for maintaining the public/private distinction, give more information about how to retrace the boundaries between the spheres. Young claims that the political or public sphere should cover as much as the individuals want it to; nothing should be excluded *a priori* from public discussion. She states:

Instead of defining the private as what the public excludes, I suggest, the private should be defined, *as in one strain of liberal theory*, as that aspect of his or her life and activity that any person has the right to exclude others from. The private in this sense is not what public institutions exclude, but what the

individual chooses to withdraw from public view (1990, 119-120; my emphasis).⁵⁵

Clearly along with liberalism, she explains that “[t]he purpose of protecting privacy is to preserve liberties of *individual* action, opportunity, and participation” (1990, 121; her emphasis). She further adds: “The feminist slogan ‘the personal is political’ expresses the principle that no social practices or activities should be excluded as improper subjects for *public* discussion, expression, or collective choices” (1990, 120; my emphasis). However, as Rawls continuously highlights, not everything that is public in the sense of social is properly political. The liberal motivation for restricting the scope of the political has been always to free society from political intervention.⁵⁶ If feminists are asking for a revitalization of the social public sphere, where the public is not understood as the properly political, but as the social public, then their demands agree with liberalism’s. However, this would convert the feminist slogan into ‘the personal is social’ or ‘the personal is public,’ which are in my opinion substantively different from ‘the personal is political.’

Young is ambiguous about the terms political and public. Within the context of her analysis of ‘the personal is *political*,’ she gives the following examples as feminist

⁵⁵ This position seems to introduce a different problem. Say Ann wants an aspect of her relationship with her husband to be private, while he wants it to be public. Whose preference is supposed to prevail and why?

⁵⁶ See *supra*.

achievements of bringing something private to *public* discussion: The meaning of pronouns, the practice of men's opening doors for women, domestic violence against women, the sexual assault of women and children, and the sexual division of housework (1990, 120-1). While the meaning of pronouns and the practice of men's opening doors for women have been brought to public discussion by feminists, they have not been brought to *political* discussion, for they are not properly political issues. Domestic violence and sexual assault of women have been made public *political* issues certainly not because they are arbitrary topics which women had the freedom to share within an open socially public discussion but because they clearly constitute cases in which injustices are being committed. They are thus political issues that entail serious violations of individual rights. The sexual division of housework, as already discussed, can become a political issue depending on whether it involves injustice or not. At any rate, Young's suggestion to retrace the boundaries between the spheres is very weak: In some aspects it is wrong, and in the ones it is not it does not prove any different from political liberalism.

2. External Critique

2.1 Care Ethics versus Ethics of Justice

There is another type of feminist critique, which is presented as external for it attempts to challenge the liberal project completely and constitute an alternative to it. The proponents of this critique do not work towards modifications within liberalism, for they think that the liberal project is radically opposed to the feminist moral one.⁵⁷ Thus feminism cannot possibly be accommodated in a liberal framework for feminism encompasses a moral project that is profoundly different from liberalism, whose principles feminist theorists reject. Carole Gilligan's findings on the different way in which men and women construct their moral categories has been extremely influential in the articulation of this critique which does not exclusively target political liberalism but the modern universalistic conception of ethics. It is not just the case that the latter constitutes a male-biased conception of justice, but that the very emphasis on justice itself reflects a male-biased theory –a “male-stream” theory, using Mary O'Brien's term.

A “masculine” ethics based on justice and rights opposes a “feminine” ethics of care. Both, Gilligan claims, constitute two fundamentally incompatible tracks of moral development, which imply different moral capacities, reasoning, and concepts, and as

⁵⁷ Iris Marion Young explicitly claims that the liberal ideal of formal equality is too weak. Young 1987, 58.

Seyla Benhabib observes, also two different understandings of the self.⁵⁸ Moreover, it is argued that care ethics is a “better morality.” Let us review the characteristics of each of these moral projects.

The ethics of justice and rights aims at fairness and impartiality. It proposes a dispassionate, disembedded and disembodied autonomous rational self which abstracts from “his” particularity in order to propose universal rules and principles which apply equally to everybody.

In contrast, an ethics of care is concerned with particular relationships, solidarity, and responsiveness to particular needs. This approach is perfectly consistent with the features of “maternal thinking” proposed by Sara Ruddick (1989). Care ethics relies on an empathetic, affective, and intuitive self who is embedded in concrete narratives –as opposed to a universally valid, abstract theory. Her ability for contextual moral judgment allows for recognition of a plurality of unequal capabilities that call for specific care and attention. Benhabib has called the care ethics self the “concrete other,” as opposed to the liberal and modern “generalized other.” Consistent with most feminist views, she also acknowledges that the features of the “generalized other” have been historically considered appropriate for the public and institutional interaction within the political sphere, which has entailed an exclusion from the feminine “concrete

⁵⁸ I will be following Benhabib’s account in Benhabib 1997.

other” from that sphere as well as her relegation to the domestic realm.⁵⁹

The moral feelings corresponding to the standpoint of the generalized other are respect, duty, worthiness, and dignity; whereas the standpoint of the concrete other corresponds to the feelings of love, care, sympathy, and solidarity (Benhabib 1997, 744). Furthermore, from the care ethics perspective it is not merely objective unfairness that is considered immoral, but also subjective-felt hurt, regardless of fairness.

I have two main criticisms of care ethics. First, we certainly care for the ones we love. But should we care for everybody? Is it even possible to care about all people in the way we care for the ones we know well? Is not the kind of care advocated by feminists limited to our family and friends? Should we not guarantee assistance for the orphan, or the widow, or *everyone* needy in society who might have lost her family and

⁵⁹ Moreover, Benhabib argues specifically against Rawls’s version of the generalized other: She claims that the concept of the self behind a veil of ignorance is incoherent, and therefore no sound universalizability test can be carried out in that situation. It is a self, she states, that lacks identity, because identity is not a potential for choice alone but the actuality of those choices. There is no human self behind the veil of ignorance, a fortiori there is no plurality of other selves either (Benhabib 1997, 745-747). I will not pursue a detailed discussion of Benhabib’s analysis of the original position for I want to focus on other problematic aspects of her account. I will merely mention that she seems to ignore that the original position is merely a hypothetical device, and *not* a condition in which we live. More on this critique in the chapter on Communitarianism. Martha Nussbaum has recently referred to this common misreading of Rawls’s original position (also carried out by Michael Sandel in Sandel 1998) in Nussbaum 2003, 491-2.

her friends regardless of whether she is our friend or not?⁶⁰ This is precisely what Rawls's welfare liberalism states.⁶¹ Do not we ask for that in the name of justice, and dignity, and respect, and rights, and all the notions and feelings that Benhabib associates to the liberal self? The key question in my criticism is not whether we should care for everybody but *why* we should do that. And it seems to me that unless you include in your ethical theory some sort of Kantian premise of universal equal moral worth in the way liberalism does, there is no reason why you should extend your care beyond the limits of your family or circle of friends.⁶²

Second, it seems to me that the care ethicists' understanding of subjective-felt hurt as immoral can hide abuse, oppression, as well as self-denial of women.⁶³ Imagine for instance that a husband claims that he is subjectively hurt if his wife does not serve

⁶⁰ Munoz-Dardé states "the strength of the impartialist ethical perspective is that it requires us to take account of the needs and suffering of persons with whom we have no immediate connection" (1998, 344).

⁶¹ In fact, behind the Rawlsian veil of ignorance, parties are supposed to consider that they might end up, for instance, being a poor woman that is a member of a currently oppressed minority. Some empathy is thus required by Rawls's theory, as Martha Nussbaum has also highlighted (2003, 491-3 and 496). Susan Okin acknowledges that "those aspects of Rawls's theory, such as the difference principle, that seem to require a greater capacity to identify with others than is normally characteristic of liberalism, might be strengthened by reference to conceptions of relations between self and others that seem in a gendered society to be more predominantly female" (1987, 71).

⁶² This critique is consistent with Pateman's more specific criticism of Ruddick's maternal thinking as a basis for citizenship in Pateman 1992, particularly in 21.

⁶³ See Kymlicka 1990.

him and attend all his commands after she comes home from work. Is she then supposed to do that as a caring woman? Cannot it be argued under the care ethics view that she is morally reproachable if she refuses? It seems to me that this is not what Benhabib, Gilligan, and other care ethicists will want to say. But on what basis can they justify the wife's refusal? It seems that some notion of justice is necessary—at least as a supplement to care.⁶⁴ Feminism as an emancipatory project systematically does appeal to justice but surreptitiously.

Care ethicists certainly want to include in their approach some sort of “universalization,” as well as a *universal* notion of human dignity, which can ground the feminist fight against oppression. Benhabib, for instance, appeals to the idea of “interactive universalization.” But then, although care ethicists had initially referred to the two moral projects as antagonistic, they implicitly rely on some essential notions of the liberal moral project. They are actually working towards the integration of the two moral projects, which is particularly evident in the case of Benhabib. She states,

my goal is not to prescribe a moral and political theory consonant with the concept of the ‘concrete other.’ For, indeed, the recognition of dignity and worthiness of the generalized other is a *necessary*, albeit *insufficient*, condition to define the moral standpoint in modern societies. In this sense, the concrete

⁶⁴ Munoz-Dardé adds the following: “Carers can care in a manner that we find oppressive or even damaging. By stressing what is wrong with paternalism (and by implication by *maternalism*), the social contract tradition provides resources precisely for addressing these issues” (1998, 344, her italics).

other is a critical concept that designates the ideological limits of universalistic discourse (1997, 748; her emphasis).

The care ethics project is then not one of *rejecting* liberalism, but of introducing *modifications* in it, that is, developing a sort of “better liberalism,” for which many feminists propose to use Habermas’s theory –and Habermas is a self-acknowledged liberal. Therefore, the care ethicists’ criticism is properly an internal critique instead of an external one.⁶⁵

2.2 A Non-Liberal Theory?

Some feminist theorists, like Carole Pateman, have criticized this implicit commitment to liberal categories. But does Pateman consistently reject liberalism? I do not think so. Consider Pateman’s contention for a non-liberal theory:

Feminists are trying to develop a theory of a social practice that, for the first time in the western world, would be a *truly general theory* – including women and men *equally*— grounded in the inter-relationship of the individual to collective life, or personal to political life, instead of their separation and opposition. At the immediately practical level, this demand is expressed in what is perhaps the most clear conclusion of feminist critiques; that if women are to participate fully, *as equals*, in social life, men have to share *equally* in childrearing and other domestic tasks. While women are identified with this ‘private’ work, their *public status* is always undermined. (...) *Equal* parenting and *equal*

⁶⁵ See Munoz-Dardé 1998 for further criticisms of care ethics.

participation in the other activities of domestic life presuppose some radical changes in the *public sphere*, in the organization of production, in what we mean by ‘work’, and in the practice of citizenship (1987, 121; my emphasis).

On what basis does Pateman ask for equality? It appears that, much like the modern and liberal theories she criticizes, Pateman is asking for equality as a sort of universal principle which in her view needs to be universally applied in all spheres.⁶⁶ To that extent, she is still committed to the liberal project and is indeed asking for an extension in the scope of application of liberal universal principles. Moreover, although she claims that the separation of the two spheres constitutes an “inherently insoluble problem” of liberalism, she seems to distinguish those realms pretty well in her preliminary account of the alleged non-liberal theory (1987, 121). Like most feminists, she certainly avoids the liberal language of universal principles in favor of particularity.

⁶⁶ However, as I suggested in the previous section, it seems that equality –like justice— is insufficient to depict desirable personal relationships. I do not expect mere equality in a love relationship, for instance. Moreover, equality can be inappropriate in certain contexts, and might eventually distort personal relationships. For instance, if we ask for equality within the household economy, what are wives supposed to do if their husbands make considerably more money than they do. Are they supposed to compensate for that in order for there to be equality? Are they supposed –for the sake of equality— to split the check when they go out for dinner? Besides that, what does equality entail with respect to the activities that Pateman is talking about? Does she mean that the same amount of time should be invested by the female and the male partner, for instance, in childrearing? There are many cases in which that might be in fact undesirable for the couple. Imagine I will defend my dissertation soon. I do not want my husband to spend the same amount of time than I do taking care of the children. I actually expect him to do more than that. Equality is not sufficient. Precisely because he loves me, I expect him to go beyond equality. Furthermore, Pateman’s proposal seems to reinforce an understanding of equality that feminists appeared to be rejecting because they prefer the ‘feminine’ ability to deal with particular (unequal) needs.

However, Pateman, like other feminists, implicitly appeals to those universal principles, as the fragment quoted above shows. Thus Pateman's criticisms of liberalism are internal, not external, critiques.

Something similar is true of other theorists who vigorously argue that the feminist emancipatory politics entails a rejection of modern traditions of moral and political life. An emblematic example is Iris Marion Young, who claims that the liberal ideals are deeply flawed by masculine biases. She claims, "[t]he feminist slogan, 'the personal is political,' suggests that *no persons*, actions or attributes of persons *should be excluded* from public discussion and decision-making, although the *self determination of privacy* must nevertheless remain" (1987, 58-59; my emphasis)⁶⁷ –a statement with which Rawls would have fully agreed, assuming that by 'public' Young does not mean the strictly political. Why, we might ask? Is she not implicitly appealing to modern and liberal ideas, like the universal ideal of equality in order to fight exclusion, and the modern notion of autonomy in order to claim self-determination? It seems that she is.

⁶⁷ However, in other writings Young does acknowledge positive aspects of liberalism and seems to be proposing internal critiques of liberalism. See Young 1987, 58, also referred to *supra*.

3. The “Inefficacy Critique”

Feminist theorists claim that sociological reality does not fit liberal theory. More specifically, they aver that current facts about gender are incompatible with Rawls’s theory of justice.⁶⁸ Far from them being equal within society, women, they insist, do more housework and assume more responsibilities related to child-care than males. Moreover, it is unlikely that current societies can satisfy the conditions for justice required by liberalism. Liberal theory, in a nutshell, misses reality. It thus has no power to change it. Therefore, they criticize liberalism for its inefficacy to bring about a just world. I’ll refer to this in general as the “inefficacy critique.”

Yet the “inefficacy critique” is not restricted to the lack of positive effects of liberal theory, that is, its lack of power to make reality better. According to most feminists, liberalism is not just ineffective but has had negative effects on society as well.⁶⁹ Iris Marion Young claims that “The traditional public realm of universal citizenship [based on the modern liberal discourse of justice and rights] has operated to exclude persons associated with the body and feelings –especially women, Blacks, American Indians, and Jews” (1990, 97). She also states that “The idea of the impartial decisionmaker [which she claims liberalism proposes] functions in our society to

⁶⁸ See, for instance, Susan Okin 1987 and 1994.

⁶⁹ See, for instance, Iris Marion Young, Wendy Brown, Carole Pateman.

legitimate an undemocratic, authoritarian structure of decisionmaking,” and “Autonomy is consistent with hierarchical authority provided the authorities act from impartial rationality.” (1990, 112). In a very similar light, Wendy Brown states that “a liberal discourse of generic personhood reinscribe[s] rather than emancipate[s] us from male dominance” (1995, 141). In general, feminists raising this aspect of the inefficacy critique often refer to what “tends to happen” *because of* liberalism. As a solution, feminists claim it is necessary to explore “what effect the consideration of women’s standpoint might have on a theory of justice” (Okin 1987, 71). That is, it is imperative to understand reality in order to illuminate theory and thus make it effective.

The inefficacy critique is flawed. It relies on a serious confusion among feminist theorists about the distinction between normative and descriptive claims or discourses, or, in other words, between the role of philosophy and social sciences. Ethics and political philosophy in general, and Rawls’s theory in particular, are not meant to be a *description* of reality, but an account of what reality *ought to be* like. It’s a normative –not descriptive— work. The fact that reality is not the way it ought to be, or that it is unlikely that reality accords to what it ought to be like, does not prove a normative theory wrong. It merely shows that we are not doing what we are supposed

to do, that is, that reality does not accord to theory.⁷⁰ For instance, empirical data showing that most people within society often lie does not prove that the normative statement ‘People ought not to lie’ is wrong. Likewise, feminist theorists claiming that there are several cases of injustice and inequality within currently (allegedly) liberal societies have not shown that liberalism’s view of justice and equality is wrong. They have merely shown that society is far from being just. In order to counter Rawls’s theory, feminist theorists need to come up with an argument that shows that reality ought to be different from the one that Rawls proposes. So far, however, the liberal view that the world ought to accord to the ideals of freedom and equality has been a powerful tool actually used by feminist theorists in order to criticize the unjust conditions of current sexist and discriminatory reality.

Normative theories certainly involve some descriptive statements about empirical realities. Normative is not coextensive with non-empirical. Some feminist theorists are correct in pointing out important aspects in which the descriptive statements included within liberal theories are wrong. It is thus necessary to correct them. However, that does not mean that they are right in countering normative claims with facts about reality. These two “realms” have to be kept distinct. As long as

⁷⁰ Quentin Skinner has made a similar observation in the context of his analysis of the critics of historical republicanism. See Skinner 1998, 78-9.

feminist theorists keep confusing them, many of their valuable observations about empirical reality will remain unarticulated within a normative discourse about what is just and why.

It might reasonably be argued that Rawls is partially responsible for this confusion because of his treatment of the problem of stability in PL. Susan Okin and Sharon Lloyd discuss the “practical” implications of liberalism in connection with that issue (Okin 1994, Lloyd 1995). The problem of stability, as discussed in the previous chapter and highlighted by Rawls in the opening lines of PL, is that no *comprehensive* conception of justice is compatible with the fact of reasonable pluralism, which characterizes modern democratic societies (PL xiv-xvi). The idea of a well-ordered society as developed in TJ is unrealistic: “This is because it is inconsistent with realizing its own principles under the best of foreseeable conditions” (PL xvi). It is thus Rawls himself who sets the precedents for the feminist demand that liberalism as a political theory should be “realistic.”

As a general strategy to solve the problem of stability, and as explained throughout this paper, Rawls proposes a *political* (no longer *comprehensive*) conception of justice. Yet he also introduces a distinction between the stages of the “theory.”⁷¹

The first stage contains the justification of principles of justice, that is, the properly

⁷¹ PL Lecture IV, section 2.

normative aspects. In the second stage Rawls deals with (practical) problems related to stability. So, by demanding liberalism to be “realistic,” Rawls might seem to be confusing theoretical with sociological issues (in the way the feminists do). In fact he is not. He keeps them separate, because for him they belong to two different stages of political liberalism. Certainly, he is open to criticism, because it can be argued, as we saw in chapter 1, that this distinction between stages is artificial.⁷² Issues that belong to the second stage, like the overlapping consensus, in fact seem to be essential aspects of what properly constitutes the “theory.” However that may be, what is relevant for the present discussion is that, while Rawls might have occasioned the confusion, he separates normative and descriptive claims in a way that many feminist theorists do not.

4. Final Remarks

I have argued in this chapter that feminist critiques of political liberalism are, explicitly or implicitly, internal. The ones that are presented as external critiques do not seem to realize that they rely on liberal assumptions. Feminism as emancipatory politics that struggles against oppression of all sorts is thus at home in a liberal framework. As Zillah Eisenstein has pointed out: “all feminism is liberal at its root in

⁷² As mentioned in the first chapter, this has also been suggested by Jürgen Habermas in Habermas 1995.

that the universal feminist claim that woman is an independent being (from man) is premised on the eighteenth-century conception of the independent and autonomous self.”⁷³ Moreover, as highlighted by Kymlicka, “feminist and liberals share a basic commitment to viewing the public power as a means for the protection of particular interests and needs” (1990, 256). Arguing from the feminist side, Pateman corroborates this: “personal circumstances are structured by public factors. (...) ‘Personal’ problems can thus be solved only through political means and political action” (1987, 117). Without dismissing their crucial differences, I believe it is possible to claim that both liberalism and feminism want to reform the *status quo* based on moral grounds. That is why I have said that liberalism and feminist should not be an unhappy marriage, or one that ends in divorce.

⁷³ Eisenstein, Zillah. 1981. *The Radical Future of Liberal Feminism*. New York: Longman, 22; as quoted by Phillips 1987, 15.

Chapter 3

The Communitarian Critique

After the publication of TJ, the so-called “communitarians” were among the most aggressive critics of Rawls’s liberalism. Their critique focused on the liberal conception of the person and the universal pretensions of liberalism. Most communitarians claimed either that the liberal project was intrinsically wrong, or, in the best case, that it was only one among many particular and incommensurable views of justice. Later, however, communitarianism faded, either because communitarian philosophers admitted that Rawls was not vulnerable to their criticisms, or because they eventually realized that it was not desirable to overturn fundamental liberal principles. Thus, they became internal critics of political liberalism. In this chapter, I shall discuss these internal communitarian critiques by focusing on that of Michael Sandel because he is, among the communitarian philosophers, the only one who has developed a specific response to PL. I shall start, however, by presenting in general terms the initial communitarian criticisms as well as the Rawlsian response to them.⁷⁴

⁷⁴ My exposition of this initial communitarian critique and the liberal response to it owes a great deal to Stephen Mulhall and Adam Swift (1996 and 2003).

1. The Initial Communitarian Critique

Philosophers such as Alasdair MacIntyre, Michael Sandel, Michael Walzer, and Charles Taylor questioned what they believed to be the liberal view of the relationship between the individual and his community.⁷⁵ They were called ‘communitarian’ because they called attention to the importance of the community and communal values⁷⁶, although all of them have at some point rejected this label.⁷⁷ They specifically object to the following aspects of Rawls’s liberal theory: (1.1) The conception of the person as different and prior to his ends, values, or conceptions of the good; (1.2) the asocial individualism of liberalism; (1.3) its universalistic pretensions; and (1.4) its alleged neutrality towards competing conceptions of the good. I shall argue that Rawls’s liberal theory cannot be charged with any of these objections. Rawls’s critics have in some cases misread TJ; in some other cases the changes Rawls introduced in his theory for moving from a comprehensive liberal theory in TJ to a strictly political one in PL, allow him to reply satisfactorily to the objections.⁷⁸

⁷⁵ Primarily in MacIntyre 1984, Sandel 1998, Walzer 1983, and Taylor 1985 and 1989.

⁷⁶ In Mulhall and Swift’s words, what characterizes communitarians is that “bas[e] they their work upon a particular, communally oriented conception of the person” (1992, 163).

⁷⁷ Mulhall and Swift 2003, 462.

⁷⁸ Freeman notes that “*Political Liberalism* has seen by many as the result of Rawls’s coming to terms with his critics, especially communitarians” (Freeman 2003, 28). Yet he acknowledges that Rawls himself has denied the influence of communitarian criti-

1.1 Conception of the Person

Communitarians attacked the liberal conception of the self. They argued that according to the liberals the self is prior to her ends, values, and in general conceptions of the good (Sandel 1983, 19-23, 54-9, 64). The liberal self is an autonomous agent that is capable of choosing her ends. “And before an end can be chosen, there must be a self around to choose from” (Sandel 1983, 19). Sandel grounds this critique on Rawls’s claim that individuals agree on principles of justice in the original position, that is, in a condition in which they ignore their own particular ends, values, and conceptions of the good.⁷⁹

Communitarians maintain that the liberal view of the self as prior to her ends and values is mistaken: Ends, values, and in general conceptions of the good are constitutive of people’s identity (Sandel 1998, 55-9, 179, 181; MacIntyre 1984, 204-5, Taylor 1989, 27-9, 34-6). Specifically, they claim that, first, the detachment from one’s

cisms in PL xvii n.6 (Freeman 2003, 58 n.55).

⁷⁹ Sandel relates Rawls’s project to Kant’s. While there are similarities, “the differences reflect Rawls’ concern to establish the required deontological priorities –including the priority of the self— without recourse to a transcendent or otherwise disembodied subject. (...) Rawls rejects Kant’s metaphysics, but believes he can preserve their moral force ‘within the scope of an empirical theory’ (Rawls 1979, 18). This is the role of the original position” (Sandel 1998, 23-4).

own values is psychologically impossible, and that, at any rate, it would be impossible to reason about justice under that condition (Sandel 1998, 27).

Rawls never endorsed the conception of the self that communitarians attributed to him. Communitarian critics failed to understand the original position as a purely hypothetical device that is merely pertinent when thinking about justice.⁸⁰ The original position is not meant to imply a psychological or metaphysical characterization of human beings. “The original position,” as observed by Mulhall and Swift, “is rather designed to model the normative claim that it is appropriate to exclude *certain* considerations or reasons when it comes to thinking about justice” (2003, 465, my italics).

Although critics of Rawls’s TJ focus on what individuals do *not know* behind a veil of ignorance, the idea that in the original position individuals do have some relevant knowledge when agreeing on principles of justice in the original position is for Rawls’s theory as important as the fact that individuals ignore certain information. They know what the primary goods are (that is, the things every person is presumed to want no matter what her particular plan of life may be; TJ 54-4), and also that society is characterized by moderate scarcity and a diversity of plans of life (what Rawls calls “circumstances of justice,” objective and subjective, respectively; TJ 109-10). They do

⁸⁰ Rawls explicitly refers to this misunderstanding in PL xxix.

not know what their *own* particular condition and plans of life are, but they certainly have a great deal of knowledge about society. In fact, it seems that in order to meet Rawls's requirement that parties need to seriously consider that they might be in *any* position in society, they need to genuinely know more than what people usually know, for instance, about how bad it is to be the worst-off in society.

Rawls's move to a strictly political theory in PL narrows the scope of his conception of person. Further, Rawls makes clear that his theory is not built anymore around a conception of the person, but merely around the conception of the person *qua* citizen. Moreover, in PL Rawls explicitly acknowledges that persons are not detached: We share various comprehensive doctrines that shape our identity as persons yet not as citizens (PL 31).

1.2 Asocial Individualism

The second strand of communitarian critiques overlaps to some extent with the first one.⁸¹ Communitarians accuse Rawls of asocial individualism because he ignores that community is constitutive of human goals and values, and thus of identity. Ends and values, communitarians maintain, are not individual but communal.

⁸¹ As particularly manifest in Charles Taylor's work (Taylor 1989).

Communitarians ascribe this critique to Rawls because of his contractual approach, particularly because of his claim that principles of justice are the result of an agreement between mutually disinterested individuals who want to protect or promote their interests.

Two specific claims need to be distinguished as part of this general objection that Rawls misunderstands the value of community. The first one is that society and community are necessarily the source of people's self-understanding and conceptions of the good.⁸² The second one is that liberalism neglects and downgrades the value of community. Society is seen by liberals as a mere association formed by individuals in order to advance their private interests.⁸³ This claim concerns not the origin but the content of people's conceptions.

The first communitarian claim misinterprets TJ. As with the previous strand of critiques of the conception of the person, communitarians have overlooked the purely hypothetical character of the original position. Unlike other social contract theorists, the contract situation Rawls envisions is not a historical state of nature: Therefore it is not true that he conceives any type of pre-social stage. In fact he acknowledges

⁸² Taylor and MacIntyre make this claim (Taylor 1989, MacIntyre 1983). Mulhall and Swift refer to this claim as a "sociological-cum-philosophical point" (1992, 14-5; and 2003, 466).

⁸³ See Sandel 1998, and MacIntyre 1983.

that social life is a condition for our developing the ability to think and speak (...). No doubt even the concepts that we use to describe our plans and situation, and even to give voice to our personal wants and purposes, often presuppose a social setting as well as a system of belief and thought that is the outcome of the collective efforts of a long tradition (TJ 458, 522 in the 1971 edition).

Rawls claims that the subject of justice is society's basic structure precisely because "the social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of person they are" (TJ 229, 259 in the 1971 edition).

At any rate, while these ideas might have been overlooked in TJ, PL does not leave any room for confusion. In PL Rawls explicitly addresses the importance of communal views in the constitution of our identities, and in the conception of valuable forms of life. He states, "We have no prior identity before being in society: it is not as if we came from somewhere but rather we find ourselves growing up in this society" (PL 41).⁸⁴ Rawls distinguishes "two kinds of commitments and attachments –political and nonpolitical— specify moral identity and give shape to a person's way of life, what one sees oneself as doing and trying to accomplish in the social world" (PL 31). Both kinds of commitments and attachments are social: the nonpolitical ones insofar as they are specified by the various comprehensive doctrines which are themselves social and

⁸⁴ See also PL 136.

belong to the “background culture” of civil society (PL 14); and the political ones insofar as they originate in the public political culture of a democratic society (PL 31).

As for the second claim, which concerns the content of people’s conception of themselves and what makes their lives worthwhile, communitarians have again misread Rawls’s original position. His assertion that parties in the original position act mutually disinterestedly does not entail the communitarian claim that Rawls conceives persons (outside the original position) as mutually disinterested (and even egoistic) and as making use of society for the pursuit of their individual advantages. Rawls designs the original position as he does because conceiving human beings as mutually disinterested is weaker than conceiving them as altruistic, but is strong enough to yield the two principles of justice. Rawls commits himself to the weaker proposition because it requires less evidence, which means that it is harder to refute his argument for the principles of justice.

Rawls does not maintain that persons ought to act mutually disinterestedly when they are not in the original position. The difference principle stipulates the contrary. In fact, Rawls’s difference principle involves a strong communitarian element that has been overlooked by his communitarian critics. Says Rawls, “the difference principle represents, in effect, an agreement to regard the distribution of natural talents as in some

respects a *common asset* and to *share* in the greater social and economic benefits made possible by the complementariness of this distribution” (TJ 87, my italics).⁸⁵ Thus the difference principle, Rawls maintains, “provides an interpretation of the principle of fraternity,” (TJ 90) which implies “a sense of civic friendship and social solidarity” (TJ 90).

The adjustments of the theory in PL, which constitute a significant departure from TJ, give Rawls more to say. Since society is characterized by a plurality of reasonable yet irreconcilable comprehensive doctrines, Rawls explicitly rejects the idea of a political community built around such a *comprehensive* religious, philosophical, or moral doctrine (PL 468). Such a political community would be only sustainable through the oppressive use of state’s power. However, Rawls envisions the properly constituted political community as sharing another type of genuine social good, which is strictly political as opposed to comprehensive:

In the well-ordered society of justice as fairness citizens share... the aim of ensuring that the political and social institutions are just, of giving justice to persons generally, as what citizens need for themselves and want for one another. It is not true, then, that on a liberal view citizens have no fundamental common aims. Nor is it true that the aim of political justice is not an important part of their noninstitutional moral identity (PL 146, n.13).

Furthermore, the communal goods of the various comprehensive doctrines can

⁸⁵ Rawls was even more emphatic in the original edition of TJ “In justice as fairness men agree to *share* one’s another fate” (TJ 1971 edition, 102, my italics).

be realized at the non-political level. In fact Rawls states that “the values of community are not only essential but realizable, first in the various associations that carry on their life within the framework of the basic structure, and second, in those associations that extend across the boundaries of nation-states, such as churches and scientific societies (PL 146 n. 13).

1.3 Universalism

The universal pretensions of liberalism have been an important target of the communitarian critique. Communitarians claim that values, of which justice is only one, are dependent on cultural traditions and thus not universally valid. They see Rawls as rejecting the value of community in favor of universality. As a matter of fact, Rawls presented his theory of justice as universally and cross-culturally applicable. Michael Walzer has emphatically argued that there are no universal laws of justice: Justice is culture-specific because it is the creation of a particular community at a particular time in history. Walzer deems justice ‘pluralistic’ both because it is culture-specific and because there are different kinds of goods whose distribution is governed by different criteria (Walzer 1983, 3-6).⁸⁶ The abstractness of Rawls’s primary goods is therefore

⁸⁶ MacIntyre has also argued for the contextual character of justice (MacIntyre 1983).

one of the targets of this critique. Rawls's appeal to rational choice theory in TJ also amounts to the charge of universalism.

Rawls's own words in TJ are responsible for this charge. In the unfortunate last paragraph of TJ, which has been quoted *ad nauseam* by his communitarian critics, Rawls states that "to see our place in society from the perspective of this [the original] position is to see it *sub specie aeternitatis*: it is to regard the human situation not only from all social but also from all temporal points of view" (TJ 514). He also maintains, that "embedded in the principles of justice ... is an ideal of the person that provides an Archimedean point for judging the basic structure of society" (TJ 511). This statement is misleading insofar as he in also says, in TJ, that "justice as fairness is not at the mercy, so to speak, of existing wants and interests. It sets up an Archimedean point ... *without invoking a priori considerations*" (TJ 231, my italics). The original position makes this possible as a hypothetical device that, because of the veil of ignorance, also guarantees fairness.

Moreover, as pointed out by Amy Gutmann,

The resulting principles of justice, then, clearly rely on certain contingent facts: that we share some interests (in primary goods, such as income and self-respect), but not others (in a particular religion or form of family life); that we value freedom to choose a good life or at least the freedom from having one imposed upon us by political authority. If we do not, then we will not accept the constraints of the original position (Gutmann 1985, 312).

To that extent, Rawls can argue that his theory is culture-specific insofar as it presupposes a conception of the person that stems from the political culture of constitutional democracies. However, the fact that Rawls himself does not say that his theory can only apply to societies whose public political culture contains that conception of the person, weakens Gutmann's reply to Rawls's communitarian critics.

Later, however, Rawls himself seems to acknowledge that a reply based on the ideas present in TJ was not sufficient. First of all, soon after TJ he admitted that his initial presentation of the theory in terms of rational choice is mistaken (Rawls 1985, 237 n.20). More importantly, in PL he circumscribes the application of his theory to the strictly political sphere of constitutional democracies. Rawls's political liberalism thus is explicitly culture-specific as demanded by his communitarian critics. Furthermore, as emphasized by Mulhall and Swift, within this new framework

the abstractness of Rawls's notion of primary goods appear less dubious if interpreted as reflecting his sense that the social meaning of our conception of persons as citizens is one that demands that we abstract from their commitment to particular comprehensive conceptions of the good in favour of treating them as equally capable of framing and pursuing, and revising such conceptions (Mulhall and Swift 2003, 470).

This work of abstraction is justified. It is, says Rawls, "not gratuitous: not abstraction for the abstraction's sake. Rather it is a way of continuing public discussion

when shared understandings of lesser generality have broken down” (PL 45-6). Rawls can therefore claim, as observed by Mulhall and Swift, that this abstraction “results from Rawls’s close attention to cultural particularity rather than from his failure to do so” (Mulhall and Swift 1992, 213). In fact, unlike his communitarian critics, who refer to multiple societies each with different cultures and traditions, Rawls is explicitly dealing with the problems of a multicultural society, that is, one society where multiple cultural traditions coexist. Multiculturalism constitutes nowadays the specific particularity of democratic societies.

1.4 Neutrality

Communitarians oppose the liberal claim that the state ought to be neutral towards competing conceptions of the good. According to liberals, the state should refrain from encouraging particular ways of life, and limit itself to the provision of a framework within which people make their own choices. This idea is derivative from the priority of the right over the good. Communitarian critics argue, first, that neutrality towards competing conceptions of the good is incoherent. Such neutrality is impossible. Therefore the so-called neutrality of liberalism is but one particular conception of the good –the one of western liberalism— arbitrarily imposed on all the

others. Second, they maintain that such neutrality will have undesirable consequences insofar as some practices (say, ballet and the opera) will not survive without the government's promotion.

Rawls explicitly argued for state neutrality in TJ. However, he maintains that TJ encompasses a 'thin' theory of the good that is constituted by the following two senses ideas of the good: The idea of the primary goods, and the idea of goodness as rationality (TJ 347-50), both of which make possible the deliberations in the original position.⁸⁷ It might however be thought that, because of the priority of the right over the good, a liberal political conception of justice can only use purely instrumental (that is, non-substantive) ideas of the good. To this Rawls replies "This must be incorrect, since the right and the good are complementary: no conception of justice can draw entirely upon one or the other, but must combine both in a definite way. The priority of the right does not deny this" (PL 173). In fact in PL Rawls includes three other ideas of the good that are undeniably substantive: the idea of permissible (and thus also of non permissible) conceptions of the good, the idea of political virtues, and the idea of the good of a well-ordered political society (PL 176). It can be argued that Rawlsian political liberalism is

⁸⁷ As observed by Mulhall and Swift, these ideas of the good give content to the deliberations of the parties in the original position (2003, 472).

perfectionist (although perhaps in a weak sense) to the extent that it involves a thin theory of the good.

Moreover, PL gives Rawls more to say against the charge that liberalism smuggles one particular view of the good under the cover of the right, thereby proving not neutral against other conceptions of the good. While Rawls was guilty of that charge insofar he espoused comprehensive liberalism in TJ, he released himself from it by moving to purely political liberalism. The five ideas of the good listed above are therefore strictly political values that, on the one hand, only apply to the political sphere, and, on the other hand, do not require the endorsement of any particular comprehensive doctrine. To that extent they illustrate the priority of the right over the good Rawls is advancing, and show that it is possible to reconcile the commitment to some neutrality towards reasonable comprehensive doctrines required by the priority of the right over the good, with the appeal to some substantive ideas of the good that are strictly political.⁸⁸

⁸⁸ Rawls's political liberalism is committed to a thin theory of the good insofar it includes five ideas of the good. Therefore, only *some* neutrality is possible. George Sher argues that neutrality is not necessary to guarantee the protection of the citizens, and, more importantly, that such neutrality is impossible. "For to rule out all government efforts to promote the good, a scheme of rights would have to be so extensive as to prevent the state from functioning at all" (1995, 196). He adds, "this means only that the state cannot avoid *in fact* favoring some conceptions of the good" (1995, 196, his italics), because "no scheme of rights can make a government neutral without paralyzing the state" (1995, 197). Although it seems that this objection is directed to Rawls's po-

I shall consider now the communitarian claim that the state's neutrality will have "undesirable consequences" insofar as some practices will not survive without the promotion of the state. In TJ, Rawls does not deny the possibility of supporting the arts and the sciences. In fact, he allows for a possible branch of the government, the "exchange branch," that can provide for such activities if there is support for them and for the costs they represent (TJ 248-9). He adds however that, "while the claims of culture can be met in this way, the principles of justice do not permit subsidizing universities and institutes, or opera and the theater, on the grounds that these institutions are intrinsically valuable" (TJ 291).⁸⁹

litical liberalism, it should be clear that in fact it is not. Rawls's political liberalism proposes *some* conception of the good. While this conception of the good might be insufficient to guide persons in all aspects of their life, it is certainly sufficient to justify the intervention of the law.

⁸⁹ It seems that a different argument should be made at least for universities and institutes. They do not seem to belong to this list. Opportunities and intelligence are primary goods (social and natural, respectively) (TJ 54). Effective access to education is necessary in order to guarantee equal opportunity. In fact, it is generally acknowledged that nothing impacts people's prospects in life as much as education. Says Rawls, "the difference principle would allocate resources in education, say, so as to improve the long-term expectation of the least favored" (TJ 86-7). We would be then justified to subsidize universities and institutes insofar as they are institutions devoted to education. In fact, Rawls's position about not subsidizing universities and institutes seems to contradict what he says in TJ in reference to "the essential primary good of self-respect" (TJ 91): "resources for education are not to be allotted solely or necessarily mainly according to their return as estimated in productive training abilities, but also according to their worth in enriching the personal and social life of citizens, including here the less favored" (TJ 92).

Mulhall and Swift remark that in PL Rawls presents a more qualified view about restrictions on support of this type of practices (2003, 474). Insofar as the political conception of justice is only applied at the strictly political level (“constitutional essentials and matters of basic justice”), other considerations can be introduced to settle questions that are not strictly political and for which the political conception of justice might not be pertinent. Says Rawls,

many if not most political questions do not concern those fundamental matters, for example, much tax legislation and many laws regulating property; statutes protecting the environment and controlling pollution; establishing national parks and preserving wilderness areas and animal and plant species; and laying aside funds for museums and the arts (PL 214).

However, I fail to see how substantively different this is from the view advanced in TJ, for it seems that Rawls had already acknowledged that it was possible to support the sciences and the arts on grounds other than the principles of justice. At any rate, Mulhall and Swift are right to point out that Rawls’s position faces a deeper problem, first, insofar as it is not clear where exactly to trace the line between the purely political sphere and the rest. More importantly, it seems that, regardless of whether the issue at stake is purely political or not, insofar as the protection of these activities constitutes an exercise of the state power, it should be considered in terms of the political conception of justice (Mulhall and Swift 2003, 475). This is a problem I will consider as part of the

more recent communitarian critics raised against Rawls's liberalism.

2. The (Self) Assessment of the Early Communitarian Critiques

Communitarians soon moderated their critique of liberalism. On the one hand, they realized that, as showed above, Rawls is not susceptible to their criticisms, particularly after the publication of PL. On the other hand they admitted that their own critical approach was vulnerable to different problems, and thus did not even constitute a desirable alternative to liberalism. As pointed out by Daniel Bell, "1980s communitarian theorists were less than successful at putting forward attractive visions of non-liberal societies," thereby losing credibility (Bell 2004). Their ill-suited and unfortunate examples include intimate pre-modern local communities that prove manifestly implausible given the complexity and scale of contemporary societies (MacIntyre 1984), and the Indian caste with integrated and hierarchical social meanings as a system that may be just according to its own standards, which constitutes an unattractive model for present-day societies (Walzer 1983).⁹⁰

⁹⁰ As part of his discussion of this example, Walzer states that "A given society is just if its substantive life is lived in a certain way –that is, in a way faithful to the shared understanding of the members" (Walzer 1983, 313). One ends up wondering whether the German society that vividly endorsed National socialism to which their traditions were adapted, can be then just as well.

As a matter of fact, communitarianism's emphasis on the plurality of particular cultural accounts of "the good life" eventually opened room for an uncritical celebration of cultural differences. Both feminist theorists who initially celebrated the communitarian critique and communitarian philosophers saw this as problematic.⁹¹ Sandel acknowledges that "The mere fact that certain practices are sanctioned by the traditions of a particular community is not enough to make them just. To make justice the creature of convention is to deprive it of its critical character, even if allowance is made for competing interpretations of what the relevant tradition requires" (1998, xi). Justice, adds Sandel, has an "unavoidable judgmental aspect" (1998, xi) that does not seem to be captured in the early communitarian work, which also seems to neglect that multiple cultural traditions and shared goals and values coexist, which makes it imperative to find a way to cope with competing traditions. Probably for this reason communitarians do not seriously attempt to overturn the liberal political agenda anymore.

Yet communitarians also found another type of problems in their own critique of liberalism. Walzer, for instance, observed that the different communitarian claims were, as presented, mutually inconsistent (Walzer 1990). Says Walzer, "The problem with communitarian criticism today ... is that it suggests two different, and deeply

⁹¹ See Iris Marion Young 1990 on "the differences that make a difference."

contradictory, arguments against liberalism. One of these arguments is aimed primarily at liberal practice, the other primarily at liberal theory, but they cannot both be right” (Walzer 1990, 7). Walzer argues for the partial validity of each, yet adds that “each of these arguments is right in a way that undercuts the value of each other” (Walzer 1990, 7). According to the first one, liberal theory correctly represents liberal social practice. In the liberal world, as portrayed by MacIntyre, individuals are dissociated from their community and their moral culture, so that such world is characterized by fragmentation, incoherence and loss of narrative capacity (MacIntyre 1984). However, if society is in fact like that, then it seems that liberalism constitutes the best way to deal with it. As Walzer puts it rephrasing Sandel: “If we really are a community of strangers, how can we do anything else but put justice first?” (Walzer 1990, 9)

The second communitarian critique holds that political theory radically misrepresents social life. The world is not constituted of unencumbered individuals; people are in fact bound together because society’s structure is essentially communitarian. “Liberal theory distorts this reality and, insofar as we adopt the theory, deprives us of any ready access to our own experience of communal embeddedness” (Walzer 1990, 10). Liberal theory, it is assumed, has an incredible power to transform real life that has not been granted to other theories, especially not to communitarianism.

As Walzer points out, “Liberal separatism either represents or misrepresents the conditions of everyday life” (Walzer 1990, 11). He holds that both of these statements are only *partially* right. It is to some extent right that life at liberal societies is characterized by different types of mobilities that have countercommunitarian consequences. Yet this fact does not cause social incoherence, as for instance suggested by MacIntyre (1984). To the extent that we are “creatures of community,” these mobilities do not get to move us apart from each other to the point that we still understand and maintain the ties that bind us together. Furthermore, Walzer acknowledges, the liberal language of individual rights actually constitutes our tradition, which has been strongly marked by important historical events like the civil rights struggle and massive immigration.

Also as pointed out by Amy Gutmann,

on a contextualist view, it is reasonable for *us* to believe in human rights: many of the most widely accepted practices of our society –equality of educational opportunity, careers open to talent, punishment conditional on intent— treat people as relatively autonomous moral agents. Insofar as we are committed to maintaining these practices, we are also committed to defending human rights (1985, 315).⁹²

⁹² Gutmann adds, “If moral beliefs depend upon supporting social practices for their validity, then we have more reason to believe in a liberal politics of rights than in an Aristotelian politics of the common good. In *our* society, it does not logically follow [as stated by MacIntyre] that: “I am someone’s son or daughter, someone else’s cousin or uncle; I am a citizen of this or that city, a member of this or that guild or profession; I belong to this clan, that tribe, this nation [,] hence what is good for me has to be the

Rawls himself has made a similar point: “given our history and the traditions embedded in our public life, it [justice as fairness] is the most reasonable doctrine for us. We can find no better charter for our social world” (1980, 519).

Communitarians, Walzer concludes, have to moderate their claims, and he did seriously moderate his. Although he had mounted one of the strongest attacks to Rawls in his 1983 *Spheres of Justice*, he later referred to “we liberals” in his 1990 assessment of the communitarian critique of liberalism (1985, 13), when he argued that liberalism “really does require a periodic communitarian correction. But it is not a particularly helpful sort of correction to suggest that liberalism is internally incoherent or that it can be replaced by some preliberal or antiliberal community waiting somehow just beneath the surface or just beyond the horizon” (1990, 15). The communitarian critique of liberalism is therefore internal: It is needed because of the liberal tendency to disdain tradition. Yet Walzer acknowledges that liberals themselves have worked on this sort of “communitarian correction”: “Much of the liberal political theory, from Locke to Rawls, is an effort to fix and stabilize the doctrine in order to end the endlessness of liberal liberation” (1990, 14). He adds, “the communitarian correction of liberalism cannot be anything other than a selective reinforcement of those same [liberal] values good for one who inhabits those roles” (1985, 315-6 quoting MacIntyre 1984, 204-5).

or, to appropriate the well-known phrase of Michael Oakeshott, a pursuit of the intimations of community within them” (1990, 15).

Yet Walzer goes even beyond that. He explicitly agrees (against his own 1983 critique of the universalist pretensions of liberalism) that some minimal and universal moral code runs cross-culturally (Walzer 1994).⁹³ Much like Rawls, he has stated, “I want to endorse the politics of difference and, at the same time, to describe and defend a certain sort of universalism” (1994, x). In general, communitarians have seen the need to qualify their views, and in particular to move away from overly simplistic dichotomies in which their critique of liberalism was originally framed. Those dichotomies have been extensively criticized by Gutmann (1985) and also by communitarians (Walzer 1990, Sandel 1998). Sandel’s critique led to the point of claiming that he does not always find himself in the communitarian side of the debate between liberals and communitarians:

The debate is sometimes cast as an argument between those who prize individual liberty and those who think the values of the community or the will of the majority should prevail, or between those who believe in universal human rights and those who insist there is no way to criticize or judge the values that inform different cultures and traditions (Sandel 1998, ix-x).⁹⁴

⁹³ Miller has made the same claim referring to Walzer’s “Interpretation and Social Criticism.” See his introduction in the Introduction Miller and Walzer 1995, 2.

⁹⁴ I will discuss in the next section what Sandel thinks the new version of the liberal-communitarian debate is about.

Rawls has been very clear about this, in particular since PL. It was precisely his valuing cultural diversity represented by different traditions and communities that led Rawls to argue that the state's promotion of one comprehensive doctrine comes unjustly at the expenses of the others. Political liberalism is therefore motivated by a desire to protect multiple communal values and attachments (PL xxiv-xxv, xviii-xix, 37, 144). Like feminism, it turns out that Rawls's political liberalism does more "communitarian work" than his communitarian critics acknowledge. The communitarian claim that there are various meaningful forms of community does not constitute an attack of political liberalism. Political liberalism is not against shared ends or community life: It is only against their presence in the political realm. Political liberalism does encourage a diverse, rich, and active civil society. Communitarians like Sandel have acknowledged this and reformulated their critiques. Rawlsian liberalism can certainly benefit from attending to Sandel's new communitarian critiques.

3. The New Communitarian Critique on the Priority of the Right over the Good

The specific target of the late 1990's and early 2000's communitarian critique is liberal priority of the right over the good. What is at stake in this new debate, Sandel states, is

not whether rights are important but whether rights can be identified and justified in a way that does not presuppose any conception of the good life (...); whether the principles of justice that govern the basic structure of society can be neutral with respect to the competing moral and religious convictions its citizens espouse. The fundamental question is whether the right is prior to the good (Sandel 1998, x).

Sandel specifies that the priority of the right over the good stands for two claims: The first is that individual rights are so important that they cannot be overridden by the welfare of society as a whole. The second, which is the one he seeks to challenge, is that “the principles of justice that specify our rights do not depend for their justification on any particular conception of the good life or, as Rawls has put it more recently, on any ‘comprehensive’ moral or religious conception” (1998, x). In TJ this aspect of the priority of the right over the good was grounded on the original position where selves reflect about justice in abstraction from their ends and values about the good life.

Certainly, in PL Rawls no longer relies on the original position or on the notion of the self it presupposes.⁹⁵ Rawls’s new argument for the priority of the right over the

⁹⁵ Does that mean that the idea of the original position really disappears? Not really. In PL Rawls argues that citizens converge on a liberal political conception of justice. As explained in the first chapter, Rawls focuses on the overlapping consensus, that is, on what people agree to. He does not explain *why* people agree on these ideas: He does not provide an argument in support of the liberal political conception of justice. To that extent, he does not rely on the argument from the original position anymore. However, Rawls explains the idea of a political conception of justice “using as an *example* the conception of justice as fairness” (Intro xxxviii, my emphasis), which does rely on the

good is however still problematic for Sandel. According to Rawls, the fact of reasonable pluralism that characterizes modern democratic societies grounds the distinction between our identity as citizens espousing one notion of justice, and our identity as moral persons holding different and irreconcilable doctrines of the good. This idea, as well as the conception of justice it supports, Rawls maintains, is implicit in our political culture.

This new grounding of the priority of the right over the good is according to Sandel open to three specific objections, which I shall present and discuss: First, it is not always reasonable to set aside claims arising from comprehensive doctrines for political purposes. Sometimes political agreement on ‘grave moral questions’ does depend on the truth of the contending doctrines. Second, while there is a “fact of reasonable pluralism” about the good, there is also a “fact of reasonable pluralism” about justice in contemporary societies. Third, the Rawlsian idea of public reason according to which citizens cannot include claims from their comprehensive doctrines in discussions that are strictly political, is too restrictive and will lead to an argument from the original position. He does refer, for instance, to the two principles of justice on which persons would agree in the original position, but he specifies that he “view[s] these principles as *exemplifying* the content of a liberal political conception of justice” (PL 6). The content of such a conception is given by the three more general features that I present in the fifth chapter. Later, in IPRR, Rawls indicates that citizens converge on a *family* of liberal conceptions, and does not even mention the original position or other elements of his theory of justice as fairness.

impoverishment of public deliberation (Sandel 1998, 196, development 196-218).

3.1 “Bracketing Grave Moral Questions”

There is disagreement about the good life. Bracketing considerations coming from the comprehensive religious and moral doctrines is, according to Rawls, necessary for social cooperation. Yet Sandel asks, even if citizens agree with this, why is this so important as to outweigh conflicting considerations coming from their comprehensive doctrines? If, as Rawls acknowledges, comprehensive doctrines might be true, why should they be outweighed by political values? It can certainly not be argued, Sandel observes, that comprehensive doctrines and political values have different subject matters, for Rawls himself acknowledges that they might conflict, as they in fact do in the contemporary debate over abortion rights, and the Lincoln-Douglas debate over slavery, both of which Sandel discusses (Sandel 1998, 197-202).

As for the debate over abortion, Sandel maintains that it only makes sense to bracket the religious doctrines at stake if those doctrines are not true. But “if the Catholic Church is right about the moral status of the fetus, if abortion is tantamount to murder, then it is not clear why the political values of toleration and women’s equality, important though they are, should prevail” (Sandel 1998, 198). Arguing against the

impossibility of setting aside moral and religious considerations does not necessarily imply arguing against abortion, Sandel notes. “It is simply to show that the case for abortion rights cannot be neutral with respect to that moral and religious controversy. It must engage rather than avoid the comprehensive moral and religious doctrines at stake” (Sandel 1998, 198). This debate therefore shows that the priority of the right over the good cannot be sustained.

Yet Sandel has plainly misunderstood Rawls. Rawls has never argued from the priority of the right over the good that the claim that fetuses are persons in the relevant moral sense from the moment of conception should simply be banned from a political debate over abortion. That is a claim that one can expect others to agree with regardless of their religious convictions, unlike, for instance, the claim that ‘abortion is wrong because the Vatican says so,’ with which only Catholics would agree. Certainly, an idea on which we can expect others to agree is not an idea on which every citizen will necessarily agree. We might still reasonably disagree about it and consider different sorts of possible evidence for or against it.⁹⁶ Or we might, no matter what our position with respect to the claim that fetuses are persons is, produce an argument for abortion in which such a claim is not relevant (for instance, Judith Jarvis Thomson’s in Thomson 1971). The discussion is by no means settled once this claim is included.

⁹⁶ Even the Pope John Paul II has tried to support this claim with scientific evidence on which anyone could agree instead of with statements of the type “God says so” (See Encyclical Letter *Evangelium Vitae*).

While this may not be clear enough in PL, it is certainly obvious in later writings when Rawls includes the “proviso” to his account of public reason, developing what has been called the “wide view of public reason.” Says Rawls, “reasonable such doctrines can be introduced in public reason at any time provided that in due course public reasons, given by a reasonable conception, are presented sufficient to support whatever the comprehensive doctrines are introduced to support” (Intro li-lii).⁹⁷ This wide view of public reason presupposes a greater role attributed to the comprehensive doctrines. However, this is not a substantive addition but merely a formalistic one, because elements of comprehensive doctrines can only be introduced *qua* ideas supported by the liberal political conception. The mere fact that these ideas belong to a particular comprehensive doctrine is thus not relevant, as clear in the following fragment:

Any comprehensive doctrine, religious or secular, can be introduced into any political argument at any time, but I argue that people who do this should also present what they believe are public reasons for their argument. So their opinion is no longer that of one particular party, but an opinion that all members of a society might reasonably agree to, not necessarily that they would agree to. What’s important is the people give the kinds of reasons that can be understood and appraised *apart from their particular comprehensive doctrine* (CP 619, my emphasis).

To the extent that the proviso does not constitute a substantive addition, it makes sense to argue that my reply to Sandel can be developed based on PL.⁹⁸ Sandel is therefore wrong with respect to what bracketing moral questions implies. The claim that

⁹⁷ See also IPRR 776 and CP 619.

⁹⁸ Rawls acknowledges that “the introduction into public political culture of religious and secular doctrines, provided the proviso is met, does not change the nature and content of justification in public reason itself. This justification is still given in terms of a family of reasonable political conceptions of justice” (IPRR, 784). See chapter 1 for a more complete discussion of the idea of public reason and Rawls’s account of the relationship between political and non-political reasons.

fetuses are persons from the moment of conception can be introduced in the political discussion as long as it is a claim everybody could agree on, as well as consider and evaluate the evidence for and against it, independently from what our religious convictions are. Thus Sandel's first objection cannot so far be sustained.

Thomas Nagel has found Sandel's discussion of abortion problematic on other grounds. Sandel argues that "the more confident we are that fetuses are, in the relevant moral sense, different from babies, the more confident we can be in affirming a political conception of justice that sets aside the controversy of the right about the moral status of fetuses" (Sandel 1998, 198). Nagel correctly replies

this is not a counterargument but a mere begging of the question: to use as a premise the falsity of the Catholic position on abortion is not to 'bracket' the question but to answer it, so it cannot be a condition for setting it aside. Sandel has interpreted the priority of the right as being intelligible only if it serves the good (Nagel 2006).

Sandel's second example on the debate between Lincoln and Douglas does not take him any further. According to Sandel, this debate was primarily "about whether to bracket a moral controversy for the sake of political agreement" (Sandel 1998, 200). Whereas Douglas argued for neutrality, claiming that we should avoid judging slavery right or wrong and let people make their own judgments, Lincoln argued for expressing moral judgment about slavery. Says Sandel, "Lincoln replied that it was reasonable to

bracket the question of the morality of slavery only on the assumption that it was not the moral evil he considered it to be” (Sandel 1998, 199). According to Sandel, political liberals cannot do any better than Douglas insofar as they cannot oppose slavery without presupposing some comprehensive moral doctrine. (Sandel 1998, 201-2).

Sandel mistakenly assumes that a moral objection to slavery has to rely on a comprehensive moral doctrine, so political liberalism cannot object to slavery insofar as it stipulates neutrality towards comprehensive doctrines. Yet it is possible to object to slavery based on political liberalism itself. Political liberalism does not stipulate neutrality with respect to all sorts of issues. Rawls clearly asserts that we cannot bracket *any* issue (IPRR 791).⁹⁹ The practice of slavery is obviously at odds with the requirement of equal freedom, which constitutes the core of the liberal conception of justice. To that extent slavery cannot be bracketed: It cannot be left to private choice on the grounds that it is an issue governed by particular moral doctrines; justice simply

⁹⁹ In PL he acknowledges that neutrality can be understood as having three different meanings, the first of which is “that the state is to ensure for all citizens equal opportunity to advance *any* conception of the good they freely affirm” (PL 192, my italics). Yet he states that “the priority of the right excludes the first meaning of neutrality of aim, for it allows that *only permissible conceptions (those that respect the principles of justice) can be pursued*” (PL 193, my italics). Furthermore, Rawls maintains that “Even though political liberalism seeks common ground and is neutral in aim, it is important to emphasize that it may still affirm the superiority of certain forms of moral character and encourage certain moral virtues” (PL 194).

rules out the practice of slavery.¹⁰⁰ Moral doctrines that condone slavery are unreasonable; they are incompatible with the liberal conception of justice and therefore rejected in political liberalism.¹⁰¹

Some aspects of Sandel's misunderstanding might be excused insofar as Rawls refuses to provide an explicit argument for the liberal conception of justice that is independent from the comprehensive doctrines, thereby suggesting that political liberalism affirms certain principles merely on the grounds that they are shared in our political culture.¹⁰² Yet the position that liberal principles are affirmed just because they are part of our political culture is problematic for the same reason the early communitarian critique of liberalism is problematic: The current political culture might

¹⁰⁰ See also Sandel's discussion of his third objection, where he seems to assume that the law (and the political conception of justice in general) completely lacks moral content: "Those who oppose antisodomy laws of the kind at issue in *Bowers v. Hardwick* cannot argue that the moral judgments embodied in those laws are wrong to embody any moral judgments at all" (1998, 213).

¹⁰¹ Says Rawls, "all reasonable doctrines affirm such a [constitutional democratic] society with its corresponding political institutions: equal basic rights and liberties for all citizens, including liberty of conscience and the freedom of religion. On the other hand, comprehensive doctrines that cannot support such a democratic society are not reasonable. ... they fail to establish the equal basic liberties. ... political liberalism rejects as unreasonable all such doctrines" (IPRR 801). Sandel's critique is similar to the feminist criticism according to which Rawls's theory allows anything in the non-political public sphere. Yet political liberalism explicitly rules out certain practices, disregarding the sphere where they are carried out or the moral doctrines (sexism, racism) that might be invoked to protect them. See chapter on feminist theory.

¹⁰² See first chapter.

be wrong. As Sandel himself has pointed out, “To make justice the creature of convention is to deprive it of its critical character” (Sandel 1998, xi). As I have argued in the first chapter, if we lack a justification for political liberalism beyond the fact that it is part of our tradition, we cannot be sure that our political values are more than the result of a ‘happy coincidence’ and, even worse, we run the risk of endorsing values that can in fact represent a rather unhappy one. Insofar as the political conception of justice is a normative view there are moral reasons for holding it. The current political culture might actually endorse it, but that by itself is not sufficient to make it a ‘just’ conception.¹⁰³ Also for this precise reason Sandel is wrong to suggest that there are purely pragmatic reasons for setting certain considerations aside when in a political discussion.¹⁰⁴ While there might well be pragmatic reasons for bracketing certain

¹⁰³ Richard Rorty holds the opposite view. He has celebrated what he calls Rawls’s “pragmatic turn,” which is a turn away from philosophical justifications and towards historical experience and traditions (Rorty 1988, 262). Sandel observes that “In PL Rawls pulls back from this purely pragmatic account” insofar as he claims that the principles of justice which are the object of an overlapping consensus and not the mere result of a *modus vivendi* (1998, 194). Yet in my opinion Sandel’s observation that Rawls’s account of the principles of justice is not purely pragmatic contradicts his assumption that there are purely pragmatic reasons for bracketing comprehensive doctrines in political discussion (see next note).

¹⁰⁴ This becomes evident again in Sandel’s discussion of his third objection. By comparing the case for restrictive public reason with the case for restrictive rules of evidence in criminal trials, Sandel reveals he is assuming that there is merely a pragmatic reason for excluding moral considerations from political debate. His discussion in terms of “costs” corroborate this: “to assess restrictive rules of public reason, we need to weight their moral and political cost against the political values they

considerations, political liberalism does not require citizens to do so because it is needed for the sake of the argument, or in order to achieve consensus. The reasons are eminently moral and respond to the respect for free and equal selves.

3.2 The Fact of Reasonable Pluralism

Sandel's second objection targets the priority of the right over the good. In PL such priority is justified because of the fact of reasonable pluralism of comprehensive religious, moral, and philosophical doctrines. Yet, Sandel argues, this justification works only on the assumption that "despite our disagreements about morality and religion, we do not have, or on due reflection would not have, similar disagreements about justice" (Sandel 1998, 203). Political liberalism, he adds, has then to assume that although the free exercise of human reason will lead to disagreement about the good, it will not lead to disagreement about the right. However, there is a "fact of reasonable pluralism" about justice, as debates about gay rights, and capital punishment, among others, show. Sandel grants that while it might be argued that some of those debates do not constitute disagreements about the principles of justice but about the application of those principles, some debates do show disagreement about the principles of justice are said to make possible; we must also ask whether these political values —of toleration, civility, and mutual respect— could be achieved under less restrictive rules of public reason" (1998, 215).

themselves. The debate about distributive justice illustrates this case: Libertarians actually argue for the rejection of the difference principle (Sandel 1998, 204-7). Sandel asks “If we can reason about controversial principles of distributive justice by seeking reflective equilibrium, why can we not reason in the same way about conceptions of the good?” (1998, 207). The priority of the right over the good which leads to state’s neutrality over ideas of the good is, Sandel contends, not justified.

Sandel is however wrong in holding that the liberal priority of the right over the good relies on the assumption that, while we disagree about morality and ideas of the good, we do not disagree about justice. Rawls never denied the existence of relevant controversies about justice. He merely argued that agreement about moral or religious issues is not necessary for a society to consider a government just: A considerably narrower agreement on purely political issues is required. This does not stipulate that there is no disagreement about justice. It merely specifies that in democratic societies there is no need for an agreement about x, y, and z, but only about x. Whether we already agree on x or not, at least it is a good thing that we only need to agree about that. While agreement on x is complicated, it is certainly easier to obtain than agreement on x, y, and z. Rawls’s contribution is therefore valuable insofar as he shows that such an extensive agreement is not needed in a democratic society. And as a

matter of fact, there is clearly less controversy about justice than about moral or religious issues. The conflicts about justice that we witness within, for instance, the United States, are clearly not as severe as the conflicts about moral views. It seems evident that there is less disagreement about the Constitution than about religion.¹⁰⁵

3.3 The Limits of Public Reason

Sandel's final objection targets Rawls's idea of public reason. Sandel considers it restrictive, because it excludes from the political debate reasons coming from the comprehensive doctrines. This objection ultimately targets the priority of the right over the good. Sandel basically is reiterating the claims he had raised under the first objection, which I have already discussed. Excluding comprehensive doctrines in political discussion has "political costs" besides the moral costs that have been discussed already.

"Where political discourse lacks moral resonance, the yearning for a public life of larger meanings finds undesirable expressions," says Sandel. "Fundamentalists rush in where liberals fear to tread" (Sandel 1998, 217). Sandel however rightly acknowledges that "It cannot be said that political liberalism is wholly responsible for these tendencies" (1998, 217). Yet its vision of public reason "creates a moral void that

¹⁰⁵ See also Nagel 2006.

opens the way for the intolerant, the trivial, and other misguided moralisms” (1998, 217). Sandel asks “whether a more spacious public reason would sacrifice the ideals that political liberalism seeks to promote, notably mutual respect among citizens who hold conflicting moral and religious views” (1998, 217). According to political liberalism we respect other citizens’ moral and religious views by setting them aside in political debates. Sandel proposes another conception of mutual respect, which he calls the “deliberative conception,” according to which

we respect our fellow citizen’s moral and religious convictions by engaging, or attending to, them –sometimes by challenging and contesting them, sometimes by listening and learning from them— especially when those convictions bear on important political questions. There is no guarantee that a deliberative mode of respect will lead in any given case to agreement with, or even appreciation of, the moral and religious convictions of others. It is always possible that learning more about a moral or religious doctrine will lead us to like it less. But the respect of deliberation and engagement allows a more spacious public reason than liberalism allows. It is also a more suitable ideal for a pluralistic society. To the extent that our moral and religious disagreements reflect the ultimate plurality of human goods, a deliberative mode of respect will better enable us to appreciate the distinctive goods our different lives express (1998, 217-8).

Sandel argues for this position based on the moral and political costs of the liberal restrictive view of public reason. The moral costs depend on the importance of the comprehensive doctrines that liberalism requires us to set aside in political discussions. I have shown in the section “Bracketing Grave Moral Questions” that

Sandel's claims about the moral costs cannot be sustained.¹⁰⁶ His claims about the political costs are even weaker: He criticizes political liberalism on the grounds that it has undesirable effects in society, such as fundamentalism. As already mentioned, Sandel certainly acknowledges that political liberalism is not *wholly* responsible for them. Yet to what extent can it be claimed at all that political liberalism is responsible for those undesirable effects, which are in fact illiberal –intolerant, narrow, and fundamentalist, in Sandel's words? It seems that these illiberal behaviors would result from a poor application of political liberalism, or arise when the liberal conception of justice is not held with sufficient conviction.¹⁰⁷ But if the problem is 'not enough political liberalism,' to what extent can the solution be other than 'more liberalism'? Certainly a 'something other than liberalism' solution would not make sense.

It is in fact difficult to see to what extent Sandel's proposal constitutes a significant departure from Rawls's theory. To begin with, Sandel seems to assume that, according to Rawls's idea of public reason, public debates are poor, so citizens lack opportunities to ventilate their moral and religious views. But that is not the case.

¹⁰⁶ I am assuming for the sake of the argument that this way of conducting the discussion in terms of "costs" is appropriate. Yet I do not think it is. It wrongly suggests that we are dealing with merely pragmatic (instead of moral) decisions. It does obscure the main issue at stake: the essential moral character of political liberalism. I also made this point in the section "Bracketing Grave Moral Questions."

¹⁰⁷ Using Rawls's terminology, that happens when, instead of an overlapping consensus, there is merely a constitutional consensus or a *modus vivendi*.

Rawls's idea of public reason applies exclusively to particular topics and forums. The enhancement of social life has historically motivated the liberal concern with the limits of the political sphere.¹⁰⁸ Rawls's idea of public reason is not meant to capture the richness of all the various debates that take place within society; he even mentions other forms of discourse which, while important, do not express a form of public reasoning.¹⁰⁹

Sandel's proposal suggests more important questions. Does he imply that all the problems of political liberalism that he has pointed out will be solved by adopting the deliberative conception of respect? He has criticized liberalism's priority of the right over the good, and maintained that the right should not be prior to the good because it should not be detached from the good in the first place. At any rate, what specific relationship between the right and the good does Sandel propose?

¹⁰⁸ See chapter on feminist theory.

¹⁰⁹ These are declaration and conjecture. What characterizes declaration is that "we each declare our own comprehensive doctrine, religious or nonreligious. (...) The aim of doing this is to declare to others who affirm different comprehensive doctrines that we also each endorse a reasonable political conception belonging to a family of reasonable such conceptions. (...) In this way citizens who hold different doctrines are reassured, and this strengthens the ties of civic friendship" (IPRR 786). Conjecture is expressed when "we argue from what we believe, or conjecture, are other people's basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide for public reasons" (IPRR 786).

4. The New Communitarian Proposal

There are different ways of linking justice with conceptions of the good. Says Sandel, “there are two versions of the claim that justice is relative to the good” (1998, x). According to the first one, principles of justice depend on traditions for their validity. This way, as Sandel acknowledges, is insufficient.¹¹⁰ According to the second way, “principles of justice depend for their justification on the principles of the moral worth or intrinsic good of the ends they serve. (...) [T]he case for recognizing a right depends on showing that it honors or advances some important human good” (Sandel 1998, xi). This way of tying the right with the good can be described as teleological (or ‘perfectionist’ in the contemporary jargon) since the case for rights rests on the moral importance of the ends it promotes.

Sandel does not endorse this second alternative. It is not clear, first, on what basis he rejects it. He merely says the following about it:

Aristotle’s political theory is an example [of this way of linking the right with the good]: Before we can define people’s rights or investigate ‘the nature of the ideal constitution,’ he writes, ‘it is necessary for us first to determine the nature of the most desirable way of life. As long as that remains obscure, the nature of the ideal constitution must also remain obscure’ (Sandel 1998, xi, quoting Aristotle 1323a14).

Does Sandel reject a teleological or perfectionist account because of the

¹¹⁰ See section 2 in this chapter.

difficulty of specifying what the morally valuable ends are? He proposes a third way of linking the right with the good: “rights depend for their justification on the moral importance of the ends they serve” (1998, xi). It is not clear at any rate to what extent this way of linking the right with the good is substantially different from the second alternative. According to the second alternative, the justification of rights and principles of justice depend on “the moral worth *or* intrinsic good of the ends they serve,” while according to the third one it depends on “the moral importance of the ends they serve” (1998, xi, my italics). Sandel might be suggesting, that the third alternative, unlike the second one, does not imply that the ends do not have an *intrinsic* moral value. That is however a speculation since it is not clear that the second alternative stipulates that the ends necessarily have an intrinsic moral value. In fact the use of ‘or’ in the quote above (“the moral worth *or* intrinsic good of the ends they serve”) discourages this reading.

Liberalism clearly does not fit any of these cases, because it is allegedly not a theory in which the right is relative to the good but prior to it. Rights are justified for liberals because they allow individuals to autonomously choose their ends for themselves. The content of the ends is thus irrelevant; it is the fact that they result from voluntary choice what makes them valuable (Sandel 1998, xii). Sandel therefore argues

that “Liberals who think the case for rights should be neutral towards substantive moral and religious doctrines and communitarians who think rights should rest on prevailing social values make a similar mistake; both try to avoid passing judgment on the content of the ends that rights promote” (Sandel 1998, xi). Furthermore, liberalism is problematic because it assumes that all the objects of choice are equally valuable, and all chosen ends are equally authoritative. Ann’s choice to watch soccer is equivalent to Beth’s choice to go to church. Preferences are equalized to claims of conscience or religious duties; both are “wants.”

Sandel’s analysis of how liberal theorists link the right and the good reveals, again, deep misunderstanding of political liberalism. First of all, as Mulhall and Swift have pointed out, the liberal idea that we should be able to revise our comprehensive doctrine only makes sense if we can be wrong about our goals and values, which means that all goals and values (and in general comprehensive doctrines) are not ‘equally good’ just because we happen to choose them. It is their content (and not the mere fact that they result from our choice) what makes them valuable. If our views are good merely because we happen to choose them, then what’s the point of having the capacity to revise them? (Mulhall and Swift 1992, 24)

Furthermore, as already discussed in the section on neutrality in this chapter, it

is not true that the right is according to Rawls unrelated to the good. The right embodies a substantive idea of the good. The right is not 'neutral' towards the good for it is not compatible with *every* view of the good. In a nutshell, rights and justice are not moral content-free but substantive moral notions. But, as also said already, Rawls is to some extent responsible for this misunderstanding. While he certainly states that the priority of the right over the good does not deny an essential link between both, he is not sufficiently clear about the moral foundation of the right. In fact, as shown in the first chapter, he explicitly avoids providing an argument for the political conception of justice. The fact that it constitutes a widely shared view within constitutional democracies is insufficient, and it actually makes political liberalism as problematic as some of the early communitarian proposals. Rawls's claim that each person or group will have its own way of supporting the political conception depending on their own comprehensive doctrines is also unsatisfactory. If we agree on a liberal political conception of justice we should at least be able to explain what the moral justification for such conception is. While Rawls does not *completely* avoid passing moral judgment, as Sandel says, he is avoiding it to some important respect.

5. The Contribution of Communitarianism

The communitarian critique of the priority of the right over the goods reveals the lack of an argument to ground the liberal conception of justice. If in a politically liberal society we ought to be willing to subordinate what our own comprehensive doctrines dictate to the political conception of justice, then it seems that, first, we need a powerful justification for such conception of justice. Second, it reveals that political liberalism is not, as it has been presented by Rawls himself, a “module” that easily fits with most comprehensive doctrines. Political liberalism demands a great deal of sacrifice from citizens: They have to respectfully put some of their most important views aside whenever it is necessary. In order to do this, citizens need to be truly convinced of the moral value of the political conception of justice. Citizens whose moral views are simply “not inconsistent” with political liberalism might not be as willing to bracket certain views as other citizens whose moral views resonate with this political conception. Only people who deeply endorse the political conception will also accept that it should be authoritative over comprehensive doctrines. Only for them the right will be prior to the good.

Does this imply that we have to go back from political to comprehensive liberalism? I do not think so. Yet it is imperative to clarify what exactly a revised

version of political liberalism would imply. It seems that it cannot be as “thick” or comprehensive as in TJ, nor as “thin” as in PL. It needs to be thick enough to have explicit moral foundations, as it did in TJ. In PL Rawls got rid of them in order to attend the critiques. But he threw out the baby with the bath water. He did eliminate the problems but also the support of the theory. Now we need to find a way to bring the baby back to the bathtub in fresh water.

Chapter 4

Republicanism and Its Critique

There has recently been a revival of the republican tradition in political philosophy. Republican theorists (hereafter: republicans) advance a concept of freedom defined in terms of non-domination, which they contrast with the liberal conception of freedom as non-interference. In this chapter I shall argue (in section 2) that republicanism is not sufficiently different from liberalism to count as a genuine alternative to political liberalism. Republicanism's criticisms are therefore internal critiques of liberalism. To the extent that republicanism differs from Rawls's liberalism, it is not even an attractive version of liberalism. Although Quentin Skinner is the most important historian of republicanism, I will mainly focus on the republican theory of Philip Pettit because he is the most important advocate of republicanism as a normative theory.

1. Republican Freedom as Non-Domination

Republicanism advances freedom as non-domination. Freedom as non-domination is presented as an alternative to the notions of negative and positive freedom described by Isaiah Berlin: Negative freedom is absence of interference, and positive

freedom is ‘self-mastery,’ ‘self-control’ or ‘self determination.’¹¹¹ In the republican tradition freedom is conceived as absence of mastery by others, that is, as non-domination. Domination is exemplified by the relation between master (*dominus*) to servant or slave. Non-domination hence involves a certain status of equality, which Pettit repeatedly depicts with the metaphor of agents being able to “look the other in the eye.”¹¹² It is thus not equivalent to non-interference, which is the absence of actual coercion or obstruction.

Liberal freedom as non-interference and republican freedom as non-domination constitute different ideals according to Pettit, because interference and domination are “different evils” (1997, 22): It is possible to have domination without interference, as well as interference without domination. An individual can be dominated by a kind master who does not actually interfere with his servant’s choices. Absence of interference is not good enough because actual non-interference could be the lucky result of a precarious contingency. Such an individual would be still exposed to the *possibility* of interference by her kind master. If freedom is conceived as non-domination, this contingency is avoided; the possibility of interference is ruled out by the fact that the agents are secured against it.

Similarly, it is possible to undergo interference without being dominated, that is, without relating to anyone in the fashion of servant. When interference is meant to further the agents’ interests, then such interference is non-arbitrary so it does not

¹¹¹ Berlin 1958.

¹¹² Pettit 1997, 5, 71 and *passim*. He adds, “[Freedom as non-domination] requires the capacity to stand eye to eye with your fellow citizens” (1997, 5). See also 1997, 63-4, 71.

constitute domination. Such is the case of the non-dominating interference of the law. Non-domination therefore involves not merely a capacity for interference, but a capacity for *non-arbitrary* interference. Yet what makes an act of interference arbitrary? Pettit acknowledges that arbitrariness can be defined in a procedural and in a substantive sense. In the procedural sense an act is arbitrary if it is chosen (or rejected) at the agent's pleasure, without reference to the interests of those affected. In the substantive sense an act is arbitrary if it goes against the interests of the persons affected. Pettit endorses the substantive sense.¹¹³ He specifies that it is at least necessary to track the *relevant* interests of the persons affected. "My relevant interests and ideas," Pettit explains, "will be those that are shared in common with others, not those that treat me as exceptional, since the state is meant to serve others as well as me" (1997, 55-6). Thus, the interference perpetrated by the state is non-arbitrary as long as it furthers the relevant interests shared by those affected.¹¹⁴

According to Pettit, non-domination is not merely necessary but sufficient for an account of freedom. That is, in his opinion freedom can be defined *exclusively* as non-domination. This fact does not mean that non-interference is unimportant. In Pettit's view non-interference is subordinated to freedom as non-domination (1997, 75-5; 2002, 342-5). He argues,

¹¹³ Pettit specifies that "an act of interference can be arbitrary in the procedural sense intended here—it may occur on an arbitrary basis— without being arbitrary in the substantive sense of actually going against the interests or judgments of the persons affected" (1997, 55).

¹¹⁴ "The state will not interfere on an arbitrary basis (...) so far as its interference has to be guided by certain relevant interests and ideas and those interests and ideas are shared by those affected" (Pettit 1997, 63).

Even if domination is the only antonym of freedom, it is still going to follow according to my analysis that undominating or nonarbitrary interference –in particular the interference suffered in living under a coercive but fair rule of law — must count as a secondary offence against freedom. Such a rule of law will not *compromise* freedom, in the manner of a dominating agency, but it will *condition* freedom (...), it will reduce the range or ease with which people enjoy undominated choice (2002, 342; his emphasis).

While domination alone compromises freedom, a number of factors condition it insofar as they limit one's ability to exercise freedom. The factors that condition freedom, such as non-arbitrary intentional interferences and natural obstacles, like poverty, must be minimized in order for freedom to be effective (as opposed to merely formal). That is, formal republican freedom requires non-domination, while effective republican freedom requires also the minimization of interference. Pettit acknowledges that the law, and in general interference from the state, condition freedom yet do not compromise it (1997, 75-7).

In contrast with Pettit, Skinner claims that the republican ideal of freedom involves *both* non-domination and non-interference as equally important concerns (Skinner 1998, 68-9 and 83-4). As Pettit observes (2002, 342) this disagreement is not substantial; it only amounts to a different way of ranking the following four possible scenarios:

1. Neither interference nor domination
2. Both interference and domination
3. Domination without interference
4. Interference without domination

Pettit claims that the third will be worse than the fourth, while Skinner thinks that 3 and 4 are equally bad. Pettit claims that his way of ranking the scenarios fits better with the position of the traditional republican authors; Skinner disagrees.

Furthermore, republicanism is, as advanced by Pettit, a consequentialist theory as opposed to a deontological theory (1997, 97-102). Non-domination, he argues, is a goal that the state should promote (maximize) instead of a constraint it must honour. He concedes that this can be problematic:

If the promotion of non-domination required resort to institutional arrangements and strategies that proved *intuitively repulsive to our moral sense*, then we might well wonder whether non-domination really was an adequate political ideal or, if we remain confident on that point, whether the appropriate policy really was one of promoting the ideal rather than honouring it (1997, 102; my emphasis).

Pettit's solution to this conflict appeals to the test of reflective equilibrium. The rationale goes like this: If the promotion of non-domination requires morally objectionable arrangements, then non-domination is an unattractive ideal. However, the ideal of non-domination passes the test of reflective equilibrium, which means that the ideal proves to fit with our moral judgments. Therefore, the ideal of non-domination is attractive.¹¹⁵

2. Does Republicanism Really Differ from Liberalism?

My major point about republicanism is that it is not sufficiently different from Rawls's liberalism to count as a different kind of theory. In particular, freedom as non-domination does not distinguish republicanism from liberalism. Two features have been

¹¹⁵ See Pettit 1997, 102.

introduced in order to distinguish domination from interference: (1) The *capacity* for interference (as opposed to actual interference), and (2) the fact that the interference is *arbitrary*. The first one articulates the possibility of domination without interference, while the second one articulates the possibility of interference without domination. I shall first focus on (1).

Liberals are not only concerned with actual interference but also with domination as potential interference.¹¹⁶ As observed by Dudley Knowles (1999), Erin Kelly (1999), John Christman (1998), and Roger Boesche (1998) liberals consider evil the possibility that someone has the capacity to interfere with another.¹¹⁷ Insofar as potential interference constitutes a threat to freedom it can be seen as a type of constraint against which liberals also want to protect citizens (Christman 1998, 203). In general, the law is meant to guarantee that nobody has the possibility of interfering (Knowles 1999, 416, 418). More importantly, egalitarian liberals are clearly concerned with this aspect of domination since they advance “equal freedom,” that is, they are simultaneously explicitly concerned with both freedom and equality.

Pettit insist that in order to achieve non-domination it is imperative to guarantee that nobody is at the mercy of the other, that is, that there is no asymmetry of status.¹¹⁸ Domination is then, Pettit repeatedly observes, a matter of status, as opposed to the result

¹¹⁶ Roger Boesche has observed that Pettit does not offer any evidence for his claim that liberals are exclusively concerned with actual interference (1998, 863).

¹¹⁷ This might certainly not be true if we consider Hobbes’s mechanistic account, which is the one Pettit contrasts his view with, but it seems to be the case with contemporary liberals. Pettit assumes that Hobbes counts as liberal, but that is a highly questionable assumption which I do not think is correct.

¹¹⁸ Pettit 1997, 25, 31-2, 63-4, 68.

of specific actions given that a gentle master might decide not to act in ways that interfere with his servant and still dominate her.¹¹⁹ The condition in which there is no asymmetry of status is a condition of equality. That is why Pettit mentions the importance of the strategy of reciprocal power in order to achieve non-domination: “The strategy of reciprocal power is to make the resources of dominator and dominated *more equal*” (1997, 67, my emphasis). As developed in the section 1 of chapter 4 of *Republicanism*, freedom as non-domination “displays a distinctively egalitarian character” (1997, 111). In order to achieve non-domination it is thus necessary to guarantee equality between the citizens: “The equality sought required an equality before the law and before whatever instruments were available for asserting people’s freedom as non-domination” (1997, 117).

Egalitarian liberals’ concern with equality is meant to secure that status in which, using Pettit’s metaphor, “everybody can look at each other in the eye”: A status of non-domination. Insofar as they advance freedom and equality, egalitarian liberals advance non-domination. It is then not true that “the ideal [of freedom as non-domination] is *distinctively egalitarian*” (Pettit 1997, 110, my italics).¹²⁰ Furthermore, it seems that

¹¹⁹ “domination will also tend to introduce a characteristic asymmetry of status,” Pettit states in 2002, 350. See also Kapust 2004, 383, 388.

¹²⁰ Pettit 1997, 110. As part of his discussion about the importance of equality for non-domination, Pettit states:

Some may not be persuaded that the connection between non-domination and equally intense non-domination is as tight as I take it to be. If they are to be substantively faithful to the republican tradition, then (...) such thinkers will have to do with freedom as non-domination what Rawls and many liberals do with freedom as non-interference. They will have to take *equal freedom*—strictly speaking, equally intense freedom—to be the central concern (1997, 117, my italics).

Rawls's egalitarian liberalism accounts better for equality insofar as it is more specific and details how precisely it relates to other aspects of the theory. Pettit's metaphor of "looking at each other in the eye" is too vague to bear theoretical weight.¹²¹ He certainly mentions that his theory is committed to structural but not to material egalitarianism; yet it is still not clear how these particular demands relate to other aspects of his theory, or why freedom as non-domination necessitates one type of equality and not the other.¹²²

We can see the desire of liberals to protect people against domination more clearly if we consider Rawls's egalitarian liberalism. Non-domination is deeply embedded in the rationale of the original position. Since behind the veil of ignorance a person does not know whether she may be *actually* interfered with or not, by necessity

This suggests that, by having equal freedom as his main concern, Rawls and egalitarian liberals achieve the same than Pettit with his idea of freedom as non-domination.

¹²¹ As also observed by Dudley Knowles, Pettit "has to go beyond the recital of metaphors of citizens 'looking at each other in the eye' and the like" (1999, 418).

¹²² Says Pettit in a summarizing paragraph:

While the republican project of promoting overall freedom as non-domination does imply equally intensifying non-domination, it does not necessarily involve equally extending undominated choice. While the project is committed to structural egalitarianism, as I put it, and while it scores well in this regard, it is not essentially committed to any sort of material egalitarianism. There may be a case for instituting certain material inequalities (...) but it is subject to more empirical contingencies than in the case for establishing structural equality: the case for establishing equality in the intensity with which people enjoy freedom as non-domination. (1997, 119)

However, as pointed out by Roger Boesche, it is not clear "that freedom as non-domination 'requires' (p.81) institutions that value equality and general welfare" (1998, 865, his emphasis). He adds, "Pettit thinks that a 'welfare state' (p.163) follows somewhat logically from his principle of freedom" (1998, 865, his emphasis).

she has to focus on the *potential* exposure to interference.¹²³ Republicanism thus seems to collapse into liberalism. Pettit does not acknowledge the relevance of this particular aspect of Rawls's liberalism, although he continuously points out the similarities between his own theory and Rawls's, and contrasts both with libertarianism which is the specific target of his critiques for its lack of a concern with equality.

Since liberalism is concerned with both non-interference and non-domination, it seems to be closer to Skinner's republicanism than to Pettit's. As mentioned above, Pettit subordinates interference to domination. He argues that it is worse to suffer domination without interference (third scenario above) than interference without domination (fourth scenario). Yet is that true? It is certainly not obvious. Most people would agree that, even if domination is politically worse, it is factually better than interference. Pettit claims that such was the view of classical republican authors, and further offers the following example to support his claim. In a crime of assault there is both domination and interference. Pettit analyzes it in the following way in order to show that domination is worse than interference:

We can distinguish in any such case between the evil associated with the domination assumed by the criminal and the distinct evil associated with the *reduction of choice by the criminal's interference*. While a victim generally suffers reduced choice as a result of crime –say, that involved in loss of money, traumatising, or physical harm— this is the sort of effect that might have come about as a result of an unintended accident. The evil of reduced choice is certainly important, but it is distinct from the evil involved in the assumption and

¹²³ Using Pettit's expression –see below— you have to imagine yourself as being part of all “vulnerability classes.”

exercise of domination by the criminal; it is this evil that explains why, intuitively, it is worse to have one's choices reduced by crime than by an unintended, perhaps purely natural, accident (Pettit 2002, 344, *my italics*).

His discussion of these examples is not persuasive. The evil of interference that the victim suffers is not merely "a reduction of choice," as Pettit tendentiously says, but active coercion. The victim was left with no choice (say, no choice to keep her money) and furthermore harmed by her attacker. Hence it is not "the sort of effect that might have come about as a result of an unintended [perhaps purely natural] accident," and it is then not clear it is not worse than the domination by the criminal.

Besides, it is not even clear that a crime of this sort necessarily entails domination by the criminal. We can conceive of a robbery in which the criminal simply takes the handbag of his victim and runs away, without relating to her "in the fashion of a master." It seems that in order to use this example to support his claim that domination is worse than interference, Pettit would need to explain that more precisely as well. At any rate, Pettit himself acknowledges that this difference between his version of republicanism and Skinner's (which seems to be closer to liberalism) is not deep (Pettit 2002, 342).

Pettit claims that republicanism is superior to liberalism because republicanism is "distinctively communitarian" (1997, 110). Pettit does not mean that republicanism amounts to communitarianism, understood as the contemporary political theory proposed by Michael Walzer, Alasdair MacIntyre, Charles Taylor, and Michael Sandel. These latter communitarians advance a positive account of freedom as self-mastery

from which Pettit explicitly dissociates himself.¹²⁴ Rather Pettit claims that for the good to be communitarian it needs to be both social and common (1997,121). Pettit maintains that:

A good will be social to the extent that its realization presupposed the existence of a number of people who display intentional attitudes and perhaps intentional activities. (...) A good will be common to the extent that it cannot be increased (or decreased) for other members of the relevant group without at the same time being increased (or decreased) for other members of the group (1997, 121).

First, with respect to the social character of the good, Pettit's definition is very weak. If republican freedom as non-domination is social by the mere fact that the existence of a small number of people is presupposed, then republicanism is no different in this respect from liberalism, which also presupposes such a thin social world. In fact, in the absence of such minimal human interaction social life would not exist so no political theory would be necessary.

Second, as for Pettit's definition of what makes a good 'common,' it is not clear that doing something for the common good will directly and equally benefit everybody in society. Most likely, it will not. For instance, we consider cleaning a polluted creek as something that we do for the common good, yet it is not the case that such action will be equally beneficial for everyone in society: The people living in the creek's neighbor-

¹²⁴ See Pettit 1997, 8, 96 and in particular 27-31, which is a section devoted to that issue. Walzer, however, associates republicanism with positive freedom (1990, 20).

hood will certainly benefit more than people that do not live close to it and do not even frequent the creek. However, it is not necessary to deepen our analysis about what makes a good “common,” for Pettit’s discussion takes a very peculiar path. In order to show the common character of the republican good, Pettit advances the idea of “vulnerability class”: If others in your situation are exposed to arbitrary interference, you are exposed as well. “You will only enjoy non-domination, therefore, so far as non-domination is ensured for those in the same vulnerability class as you” (1997, 122). For instance, in a society where women are not protected, “womanhood is a badge of vulnerability.” (1997, 123) Even if a particular woman is treated well, she is at risk of arbitrary interference.

Pettit claims that freedom as non-domination depends on how other persons in your *group* are situated because it is concerned with the possibility of interference as opposed to the actual interference that particular individuals suffer (1997, 124). Politics promoting the ideal of non-domination is therefore common: “it will have to be articulated at the level of group grievances and group assertion, as well as at the levels involving individuals as such” (1997, 124).¹²⁵ Achieving non-domination is thus a “soli-

¹²⁵ This claim would surprise other theorists of republicanism, like Cynthia Ward (1991), who argue that group-based remedies are inconsistent with the republican view of a public-regarding citizenship that has a collective definition of the common good. At any rate, it is not clear to what extent this critique can be raised to Pettit’s republicanism: Although he clearly rejects a notion of positive freedom that requires an active

daristic cause here, not just a sum of individual causes” (1997, 124). To that extent it differs from freedom as non-interference, which Pettit deems an atomistic good insofar as it promotes policies focus on individuals instead of on groups.

It is not clear that the mere recognition of vulnerability classes, which are a fact of life, is sufficient to call for the solidarity that Pettit asks for, which requires some sort of empathy. Even assuming it is, there would be solidarity between the members of *one* vulnerability class, and not between members of *different* vulnerability classes.¹²⁶ Rawlsian liberalism, which, as said before, is concerned with domination as the *possibility* of interference, does better bringing about this solidarity among *all* citizens: Behind the veil of ignorance you are potentially in any vulnerability class. Moreover, the fact that principles of justice are chosen in the original position effectively articulates the notion of vulnerability classes with the policies that rule society. Rawls’s egalitarian liberalism does therefore a better job furthering a communitarian ideal.

At any rate, it seems that, disregarding the notion of freedom that is being promoted, it is impossible for any policy not to be common in the sense Pettit proposes: State policies do not target particular individuals but can only possibly focus groups of people under similar relevant conditions.

participation of citizens, he appeals to it insofar as it is necessary for his notion of non-arbitrary interference as interference that tracks the interests of citizens.

¹²⁶ In other words, there would be *intra*class solidarity yet no *inter*class solidarity.

What then sets apart republicanism from liberalism? It is not the fact that republicanism protects individuals against the possibility of interference, that is, (1) at the beginning of section 2. If there is any relevant difference, it has to be related to the republican notion of arbitrariness, that is, (2), which according to Pettit articulates the possibility of interference without domination. At any rate, the fact that republicanism is not substantively different from liberalism is in itself not a problem, given that I am assuming that liberalism is a correct theory. It is merely problematic insofar as Pettit is claiming that republicanism is an *alternative* to liberalism.

3. Arbitrariness, Paternalism, and Domination Coming from the State

I shall argue that, Pettit's definition of arbitrariness is problematic for it legitimizes paternalism. Historically, as observed by Kapust (2004), republicanism has been compatible with paternalism. Patricians treated plebeians paternalistically. It was assumed that patricians knew better than the plebeians themselves what was in their best interest. I am taking for granted that paternalism is a bad thing: If one party acts like the father (*pater*) while the other is treated as the child, it is implied that there is no equality between both: For one to believe it is superior to the other is to show a lack of respect for the other party. I think this constitutes an instance of domination.

Freedom as non-domination is in Pettit's theory compatible with paternalistic

interference insofar as interference that furthers the ideas and interests of those affected is acceptable under this ideal. As explained above, Pettit refers to two different senses of arbitrariness, procedural and substantive. Although he does not try to harmonize them (Meyerson 174) he clearly opts for the substantive sense, according to which interference is arbitrary if it fails to track the relevant ideas and interests of those subject to it. Pettit's definition of arbitrary interference rests on the following assumptions: First, that it is possible to track the relevant ideas and interests of those affected by the interference, namely the citizens. Second, that those affected (again, the citizens) share relevant ideas and interests. These assumptions are in Pettit's view interrelated for, as mentioned above, he claims that the relevant ideas and interests of citizens are those that are shared in common with others.¹²⁷ These assumptions are certainly questionable. Particularly within the context of a multiculturalist society, it is not evident that any of those assumptions or the peculiar connection between both are true. For instance, citizens of different religions disagree about ideas and interests that they consider relevant. A group of Christians might think that their relevant ideas and interests are those related to their religion, which they do not share with citizens of other religious or non-religious groups.

Let us however grant Pettit that they are true in order to focus on my main claim

¹²⁷ Pettit 1997, 55. See quote *supra*.

about paternalism. Interference is for Pettit not arbitrary if it tracks the relevant ideas and interests of those affected.¹²⁸ According to this, if someone is being interfered with in a way that furthers her interests, then such interference is non-arbitrary and thus justified because it does not constitute domination.¹²⁹ First of all, we can easily conceive of cases that would be unanimously considered instances of domination, in which the dominated party believes that such interference is in her best interest. Traditional gender-based domination, as well as numerous cases of ethnicity-based domination (clearly in countries with a colonial background) follow that pattern. The dominated parties are told that the interference they are suffering is ultimately furthering their own interests. For instance, natives in Latin America were told (and eventually convinced) that the imposition of religious beliefs was in their best interest

¹²⁸ In a different light, John Christman has argued that tracking the interests of the those affected by the interference is not sufficient to justify the interference: “even a robber ‘tracks’ my interests during a robbery predicting that I have a higher order interest to live whether or not I hold onto my wallet. (...) [T]he question is not whether the citizen’s interests were taken into account but whether they were taken into account *properly* and according to *just procedures*” (1989, 205, his italics). Freedom as non-domination, Christman argues, is then not the ‘supreme political value’ of a just society as Pettit claims: “the protection of freedom cannot be the most basic principle of justice, since the norms that fix the reference of the concept (the principles that define ‘unjust’ ...) are logically prior to the principle that the state should protect liberty per se” (1989, 203).

¹²⁹ A different critique from the ones I am pursuing here can be made: Imprisoning Beth is against Beth’s interest. Yet interference is justified as long as it furthers the agent’s interest. Are we not justified in imprisoning her (assuming she committed a crime) because such action is against her interest?

because it would make their salvation possible.

According to Pettit's account such paternalistic interference is justified because it does not count as domination. Since arbitrariness is defined with reference to individuals' interests, paternalism is implicitly legitimized. Furthermore, it seems that it is possible for another individual or the state to claim that they know better *how* to further my ideas and interests, which would justify their interference given that such interference will not even count as arbitrary. For instance, it can be argued that it is in the interest of Americans not to drink soda and to exercise for one hour each day. According to Pettit's theory, the government would be justified in banning sodas and forcing people to exercise because it is in their best interest to do so.¹³⁰

Pettit admits some problematic aspects of his definition of arbitrariness. For instance, he acknowledges that these questions are difficult to answer: How do we know that the interests that are being promoted are those that everyone would identify as relevant? How do we guarantee that the interest is not sectional or factional? Pettit recognizes the practical necessity of public discussion in which people speak for themselves and express their own interests (1997, 56). Every idea should be open to

¹³⁰ Moreover, it seems that a republican government that promotes the common interests and ideas of the citizenry would end up collapsing into a comprehensive morality and thus find itself in conflict with diverse cultural and religious values (Kelly 1999, 93).

challenge. What constitutes a common interest, Pettit states, is therefore a “political issue,” about which political theorists are not competent to decide beforehand (1997, 56-7). However, he admits that it is possible that some individuals cannot speak for themselves (1997, 60). This is a damaging admission because if some individuals cannot speak for themselves and be in fact dominated, then it seems that it is not true that what constitutes the common interest and thus amounts to non-domination is a “political issue” but one that theorists can in fact identify beforehand.

Pettit explicitly states that consent is not a sufficient guard against arbitrariness: “What is required for non-arbitrariness in the exercise of a certain power is not actual consent but the permanent possibility of effectively contesting it” (1997, 63). Yet this brings us again to paternalism because some domination is not contested by some of those who are subjected to it because they might mistakenly believe that the domination furthers their interests. It is then not clear that possible contestation can be the ultimate guard against arbitrariness (and thus against domination).

The problem with paternalism is not merely that it constitutes some sort of “undesirable side effect.” Rather, it is that paternalism is a type of domination in which one of the parties (the dominating one) has the authority to judge what is in the best interest of the other party based on the belief that the inferior party is incompetent. The

essential inequality that characterizes domination is evident. Pettit's attempt to secure individuals against domination has paradoxically legitimized a serious form of it.

In fact, history constantly shows that the state has been an oppressive source of arbitrary interference, whether paternalistically masked under alleged non-arbitrariness or not. People in government often use the state's power and resources to promote their own moral or religious views, thereby dominating others. The fact that it is very hard to track the ideas and interests of the citizens makes it even easier: Groups advancing sectional or factional interests will conceal their domination by claiming that they are in fact furthering the interests of the citizenry. Pettit's republicanism cannot prevent this type of scenario; there is no recourse in his theory to rule it out. He certainly acknowledges the possibility of the state threatening freedom as non-domination: "as a state gains the powers necessary to be a more and more effective protector (...) it becomes itself a greater threat to freedom as non-domination than any threat it seeks to remove" (1997, 105). However, he does not properly tackle this problem. There is no clarification of what practices are ruled out and on what basis. By not clarifying the limits of the state action on a moral basis, Pettit opens his theory to a serious criticism. Moreover, given that he has claimed that his starting point is a multiculturalist society, he cannot validly reply that he has not determined those limits because they depend on

particular cultural traditions.¹³¹

I am not criticizing Pettit on the grounds that the state might actually dominate its citizens. Rather my criticism is that he does not clarify the limits of the state action on a *moral* basis. No theory of ethics or political philosophy can be considered at fault if the agents (individually or collectively) do what they *morally ought* not to do. No normative account can prevent that. Normative theories (about what subjects *ought* to do) are not proven wrong because subjects fail to do what they ought to do.¹³² The problem I am pointing out here gets exacerbated because of Pettit's consequentialist framework.

4. Consequentialism and Its Problems

Pettit maintains that freedom as non-domination is a goal that the state should maximize as opposed to a constraint it must honour. Yet it is legitimate to ask what the costs of maximizing freedom as non-domination are. Specifically, how much are we willing to give up to maximize freedom as non-domination? We can certainly conceive of various actions that will never be morally justified no matter how effectively they can promote non-domination. Pettit acknowledges that sometimes the promotion of

¹³¹ Says Pettit, "Like the liberal project, our proposal –our republican proposal— is motivated by the assumption that the ideal [of freedom as non-domination] is capable of commanding the allegiance of the citizens of developed, multicultural societies, regardless of their more particular conceptions of the good" (1997, 96).

¹³² See my discussion on normative versus descriptive claims in the chapter on Feminism.

non-domination might require restricting freedom – “[T]here are cases where a veil has to be drawn, for a moment, over liberty”¹³³— or other actions that are even “intuitively repulsive to our moral sense” (1997, 102), to the point that we “wonder whether non-domination really was an adequate political ideal or, if we remain confident to that point, whether the appropriate policy really was one of promoting the ideal rather than honouring it” (1997, 102). However, Pettit does not specify what the limitations are for morally repulsive or freedom-restricting practices, or on what basis certain practices should be ruled out even if they promote non-domination. Doing so would clearly work against his emphatic consequentialist framework.

Pettit merely appeals to the test of reflective equilibrium, and claims that the ideal of non-domination, which can require morally objectionable arrangements, does pass the test of reflective equilibrium, which proves that it fits with our moral judgments. Yet this begs the question, for it does not address *why* the promotion of non-domination does not entail morally objectionable arrangements, that is, *why* it passes the test of reflective equilibrium, which is precisely what is at stake. Pettit does not answer this question or provide an argument to show that freedom as non-domination

¹³³ Quote of Montesquieu, in Pettit 1997, 100. These are not necessarily cases of domination. As long as they are required by the promotion of non-domination, these cases constitute non-arbitrary interference, so they do not constitute cases of domination *ex hypothesi*.

passes the test of reflective equilibrium, that it, that the arrangements it entails do not conflict with our moral standards; he merely states that it does.¹³⁴ It seems that the only way to provide such appropriate argument is to invoke liberal principles, which serve as constraints that cannot be overridden in view of any “greater goal,” thereby disposing of consequentialism.¹³⁵

Paradoxically, Pettit declares that republicanism has a “potentially universalistic appeal” (1997, 133-4). The republican language of freedom as non-domination can articulate the grievances of causes such as environmentalism, feminism, socialism, and multiculturalism (1997, 131, 133-4 and ff.). It is a political *lingua franca* (1997, 131).

However, Pettit does not realize that this fact constitutes a serious weakness of

¹³⁴ Says Pettit,

A teleological republicanism would fail to satisfy reflective equilibrium if it required intuitively objectionable arrangements. As it happens, I do not believe that such a republicanism, such a consequentialist commitment to freedom as non-domination does fail the test of reflective equilibrium. On the contrary, I think that it makes requirements that reform our considered intuitions only in ways which prove on reflection to be compelling: it is in equilibrium, in this reflective way, with considered intuitions about how things should be politically organized (1997, 102).

¹³⁵ Pettit recognizes that some constraints are needed. He asks, “How can the state be organized so that state interference involves little or no arbitrariness?” (1997, 171). Constraints are thus needed in order to prevent *arbitrary* interference from the government. Says Pettit, “My case for constitutionalist constraints is that republican instrumentalities should not be manipulable by those in power” (1997, 172). However, he does not refer to the constraints that are needed in order to prevent what he has defined as *non-arbitrary* interference from the government, that is, interference that furthers the interests of the people and thereby promotes the ‘greater goal’ of non-domination.

republicanism. The problem is not that republican language fails to articulate some “good” concerns, but the fact that that same language can articulate highly immoral concerns as well, which powerfully works against republicanism’s legitimacy. Pettit does not explain on what basis we should abstain from morally objectionable arrangements that promote non-domination. He does not identify any sort of restriction for republican language; unlike political liberalism, which is restricted to “reasonable comprehensive doctrines,” there is no discussion about the concerns that republicanism *cannot*, from a moral perspective, articulate.¹³⁶

Moreover, republicanism’s consequentialism can actually work *against* the concerns that the republican language allegedly can articulate. If non-domination works as a goal and not as a constraint, as Pettit has argued, it can be the case that the best way of advancing non-domination conflicts with some of the causes that republicanism can potentially articulate. Even if republican language *can* in theory support environmentalist, feminist, multiculturalist, and socialist grievances, that does not *guarantee* that republican theory will support these causes if doing so is not the best way to promote freedom as non-domination. Republicanism is not committed to these causes in the way that egalitarian liberalism is. If republicanism were committed to

¹³⁶ Freeman emphasizes that Rawls’s theory does not suffer from this problem (Freeman 2003, 36).

supporting the key environmentalist, feminist, multiculturalist, and socialist demands, then they would play some role as constraints in order to avoid that their claims be overridden in view of “some greater goal.” And that is not *because of* liberalism’s alleged understanding of freedom as non-interference. The relevant feature is not necessarily non-interference as opposed to non-domination, but the liberal commitment to equality. It is such commitment to equality, in conjunction with its deontological character, what makes political liberalism superior.

Ironically, Pettit’s critique of liberalism is a critique of *consequentialist* liberalism.¹³⁷ By focusing on consequentialist liberalism, Pettit reveals problems that are proper to consequentialism itself, from which his own theory suffers while deontological liberalism (which constitutes most versions of egalitarian liberalism, like Rawls’s) does not. Most of the problems of republicanism are in fact associated with its consequentialism rather than with a particular notion of freedom. Thus, instead of showing the strengthness of consequentialist republicanism –as compared for instance with deontological liberalism— Pettit’s defense exposes its weakness.

¹³⁷ See 1997, 111. His only critique of *deontological* liberalism does not target liberalism but libertarianism: “Deontological or rights- based liberalism raises questions about whether it could ever be legitimate to have a state; it may seem to make anarchism the only option” (1997, 99). He refers to Robert Nozick’s libertarian theory (1974) to illustrate the view he is criticizing. Rawlsian liberalism is clearly not vulnerable to this critique.

5. Final Remarks

Although republicanism is presented as an alternative to liberalism, it is not. The distinction between freedom as non-interference and freedom as non-domination, which allegedly distinguishes both theories, is not sufficient to set republicanism apart from liberalism.¹³⁸ In order to achieve freedom as non-domination it is necessary to guarantee equality, which is a core value of liberalism. Since for liberals freedom goes in tandem with equality, they advance ‘equal freedom,’ which is equivalent to freedom as non-domination. Furthermore, like republican theorists, egalitarian liberals are strongly committed to advancing non-domination by securing equality not just in the political sense but also in the socio economic one.

Is republicanism’s critique merely that liberalism lacks an “umbrella notion” that integrates freedom with equality? If that is the case, then it seems that this is merely a superfluous dispute about words. It is certainly trivial to claim that republicanism is a superior theory because it advances a notion P whose meaning is

¹³⁸ Pettit states that “the most *crucial* difference between enjoying non-domination and enjoying mere non-interference is precisely that no individuals have this sort of power over you” (1997, 25, my italics). That means, equality among all individuals is guaranteed.

determined by notions Q and R, which are themselves advanced by liberalism.¹³⁹

Moreover, it can be argued that that dispute can be related to a historical fact: When the republican tradition was originally developed master / servant relationships constituted an important concern of classical and neo roman theorists. Nowadays contemporary liberal philosophers need not make domination a theme because they assume that people are free and equal. That means that liberals are concerned with domination as an evil, even if they do not literally refer to it.

It has been argued that what really sets republicans apart from liberals is their different understanding of the law in relationship with freedom.¹⁴⁰ While liberals hold that any sort of state interference counts as reducing freedom, republicans do not. Given that the laws and state interventions are non-arbitrary, according to republicans they do not reduce the citizens' freedom. They even make their freedom possible.¹⁴¹ However, it is not clear, first, that Rawls actually sees law as reducing (not merely conditioning) freedom. It seems that contemporary liberals like Rawls propose a more

¹³⁹ Besides, it does not even help to say that the fewer the concepts the better the theory, for in this case it is clear that "P" –freedom as non-domination— includes both "Q" –freedom as non-interference— and "R" –equality—, which are not just distinguishable as elements of P, but actually distinguished by Pettit.

¹⁴⁰ Lovett 2003. Lovett, however, does not discuss the relevance of this difference, nor whether the republican account of law is superior than the liberal one. See also Meyerson 1999.

¹⁴¹ Pettit 1997, 35-50 and 65-6; 2002, 346.

complex account of freedom. Freedom involves different levels, as for instance suggested in the *two* principles of justice.

At any rate, Pettit still acknowledges that, on the one hand, according to republican theory even the non-arbitrary interference of the law *conditions* freedom, that is, “law restricts choice, but nonetheless (...) it does not offend straightforwardly against liberty” (2002, 346). He adds, “While the properly constituted law (...) represents a form of interference, it does not compromise people’s liberty” (1997, 35). On the other hand, Pettit claims that liberals see the law as a way of “taking one step backwards in order to take two steps forward” (1997, 36): While law interferes with freedom and thereby reduces it, “it compensates for the damage done by preventing more interference than it represents” (1997, 35). So we can fairly ask how significant is then this difference between the republican and the liberal understanding of law? I fail to see its substance or implication. For one thing, as also observed by Mayerson (1999, 175) it seems that it will not be of any relevance in practice.

I want to point out that republicanism still furthers a negative type of freedom for it is the *absence* of something, namely, of domination. Such negative freedom seems to call for a deontological account. Given that the protection of individuals against domination constitutes the most important concern of republican thinkers, it

seems that a deontological account would be crucial: A deontological account would guarantee that nothing (not even a “greater goal”) overrides the protection of each individual. Even if consequentialism makes domination improbable, as Pettit repeatedly claims, it is not improbability but inaccessibility that is required: “domination goes with the accessibility of arbitrary interference to another, and the improbability of the kind in question here does not make for inaccessibility” (1997, 64). It seems then that only a deontological approach can guarantee that citizens are truly protected against any sort of domination or interference.

Although Pettit gives the impression that republicanism is intrinsically consequentialist, it is not. The consequentialist framework of Pettit’s theory is his own contribution to republican tradition. Neither the classical and modern republican theorists are consequentialists nor is Quentin Skinner.¹⁴² In fact, freedom as non-

¹⁴² Pettit asks whether the republican tradition is consequentialist or not, and his answer is “It is not possible to quote text and verse on the point, as the choice between teleological and deontological attitudes to freedom as non-domination was never articulated as such within the premodern tradition” (1997, 99-100). He adds, “the republican approach became intertwined in the commonwealthman tradition with a habit of jurisprudential, natural-rights thinking, and had a deontological aspect” (1997, 101). However, Pettit claims that “there is one aspect of the tradition that suggests a fundamentally teleological look. This is that almost all the main figures treat the question of which institutions do best by freedom as an open, empirical issue, not as a question capable of a priori resolution” (1997, 100). This, I think, is a view with which both supporters of deontology or consequentialism could agree. It does not ground the claim that the republican tradition is committed to consequentialism.

domination is entirely consistent with deontology. Moreover, a genuine concern with securing freedom as non-domination seems to require a deontological framework. It is possible to do away with Pettit's consequentialist framework, thereby certainly removing some problems of his theory while, by the same token, making the difference between republicanism and liberalism even less substantial. However, that would still not solve other problems of Pettit's theory that are related to his definition of arbitrariness; in particular, the fact that it legitimizes paternalism.

Finally, I want to highlight that there are several "gray areas" in republicanism. For instance, Pettit does not mention any sort of distinction between the private and the public sphere. However, it seems to me that he is implicitly assuming some sort of distinction when he refers to a thick and shared public environment that encompasses certain cultural values (1997, 154, 168). However, he does not explain how this fits with, for instance, multiculturalism, and moral disagreement in general. He offers a unified account of non-domination that is valid for *both* interpersonal relations and the relation with the state, although it seems that his theory would benefit from introducing certain distinctions that accommodate the relevant difference and also make room for various views of the good life.

Chapter 5

A Revised Version of Political Liberalism

Feminist theory, communitarianism, and republicanism have unsuccessfully tried to provide with alternatives to political liberalism. While in most cases they present themselves as external critiques of liberalism, they ultimately rely on liberal principles. They are therefore internal critiques that aim at correcting political liberalism's theory. The analysis of their critiques has however shown that there are problems that need to be addressed by political liberalism. More importantly, this analysis has revealed what I think is the fundamental problem of political liberalism: Its lack of a foundation.

The shift from a comprehensive to a strictly political liberal theory has not been cost-free. Liberalism abandoned its comprehensive and problematic thickness, but its resulting thinness seems too poor to yield any argument in its support. As a theory that lacks a foundation, political liberalism seems to be merely acceptable because of its practical convenience given the diversity that characterizes present-day societies, or because our favored current traditions happen to patronize it. Yet if that is the case, we would have no reason to claim that political liberalism is a moral view in its own right, as Rawls himself maintains it is.

The aim of this chapter is to show, first, that political liberalism is a moral view in its own right, and that we have good moral reasons for holding it; second, that we can morally ground political liberalism without thereby converting it into a comprehensive theory. I will start by reviewing the main problems that political liberalism needs to address (1). Then I will present a revised version of political liberalism (2). I will afterward discuss Charles Larmore's proposal for a moral foundation for political liberalism, and try to supplement it so it constitutes a foundation for the Rawlsian political conception I am advancing (3). I will next discuss a possible objection, and my reply to it (4). Finally, I will refer to some aspects of the theory that still need to be worked out (5).

1. The Problems To Be Solved

1.1 The Lack of A Foundation

Political liberalism's most serious problem is not having an independent argument in its support. Rawls has refused to provide such an argument on the grounds that it is not necessary. He has passed that job to the various comprehensive doctrines. I have argued that, whether the comprehensive doctrines ground political liberalism's conception of justice or not, an independent argument is needed for the political

conception to be the object of a principled agreement. Rawls's separation of stability from the justification of the theory contributes to his refusal to provide a foundation for political liberalism. Yet, I have argued, "stability for the right reasons" will only be achieved if there is a good argument for political liberalism's conception of justice.

The lack of an independent argument in its support is related to another problem that political liberalism faces: The priority of the right over the good. As essential as the liberal conception of justice that guarantees the freedom and equality of every person is the idea that this conception prevails over the comprehensive doctrines in cases of conflict. Without an independent argument for the liberal conception of justice, there seems to be no valid reason to subordinate the comprehensive doctrines to the conception of justice since the liberal conception is exclusively grounded on the comprehensive doctrines. If the comprehensive doctrines do ground the conception of justice, as Rawls concedes, then it seems that the conception of justice is subordinate to them. Moreover, if the conception of justice is grounded only in the comprehensive doctrines, it is not clear why citizens should refrain from introducing reasons coming from their comprehensive doctrines when exercising public reason either.¹⁴³ Overall,

¹⁴³ As mentioned in the first chapter, after the publication of PL Rawls moves to a wide view of public reason, in which it is acceptable to include elements of the comprehensive doctrines in public political discussions. Yet he includes a proviso that renders this addition vacuous: Elements of comprehensive doctrines can only be introduced in public political discussion insofar as they can be supported using elements of the political

there is no reason for giving priority to the liberal political conception if it depended on comprehensive doctrines for its justification.

Rawls refers to the political conception of justice as a sort of module, which suggests that it easily fits with various comprehensive doctrines provided that they are reasonable. Yet this “module” is not easy to accommodate given that comprehensive doctrines are supposed to be subordinate to it. It is not easy to be liberal in the political sense; the political conception of justice demands more than what Rawls initially envisioned. In order to be politically liberal, citizens are not merely required to *add* a belief P to their various other sets of beliefs, say, the beliefs A, B, C that one citizen has; the beliefs F, G, H that a second citizen has; the beliefs K, L, M that a third citizen has; and so on. They are required to *subordinate* A, B, C, F, G, H, K, L, and M to P. So they will need a very powerful reason to do so, which certainly cannot be provided by A, B, C, F, G, H, K, L, and M.

1.2 Problematic Notions and Distinctions

Rawls’s notion of ‘reasonable’ is problematic because he gives it no precise

conception of justice. The fact that they belong to a comprehensive doctrine is thus irrelevant. They are just introduced *qua* ideas supported by the political conception of justice. Comprehensive doctrines thus continue to be subordinate to the conception of justice.

sense. He mostly relies on examples to clarify the meaning of the reasonable. I have argued in the first chapter (section “The Reasonable”) that the reasonable is synonymous with liberal (in the political sense).¹⁴⁴ For instance, a comprehensive doctrine is reasonable if and only if it is liberal, that is, if and only if it endorses the political conception of justice and its subsequent requirement to subordinate to it in cases of conflict.¹⁴⁵ We do not need an extra term to convey the same meaning.

Why then did Rawls introduce this redundant notion in the first place? It certainly sounds arrogant to claim that only liberal views are reasonable. But I do not think this is the most important reason for introducing the notion of the ‘reasonable.’ I conjecture that the use of this notion works in tandem with fact that there is no argument for the political conception of justice. The ‘reasonable’ suggests that there is something self-explanatory or self-evident about the concept, as if it were somehow coextensive with human reason, and would not include any substantive but merely a formal notion of the good. Since there is something self-explanatory or self-evident about political liberalism, there is no need to present an argument in support of it. The

¹⁴⁴ Hereafter I will use the term ‘liberal’ to refer to ‘liberal in the political sense’ or ‘politically liberal,’ unless specified otherwise. Comprehensive doctrines are liberal in the political sense if they endorse the liberal *political* conception. Doing so certainly does not make them comprehensive liberal doctrines.

¹⁴⁵ When clarifying the meaning of the reasonable, Burton Dreben says, “All a comprehensive doctrine has to do to be reasonable is to endorse a liberal political conception” (2003, 326).

‘reasonable’ thus tacitly justifies the fact that there is not a foundation for political liberalism.

As already said in the first chapter, the distinction between stages of the theory also contributes to the lack of a foundation of political liberalism.¹⁴⁶ Moreover, the distinction itself is problematic. First, it is not clear that the justification and the application of the theory belong to different stages. The problem of stability, which is the problem of the application of the theory, does not seem to be different from the problem of the justification of the theory. Political liberalism will be stable if and only if there is a powerful justification to endorse it. Second, it is not clear that issues that Rawls claims belong to the application of the theory (and not to its justification) actually belong to it. For instance, as mentioned in chapters 1 and 2, the overlapping consensus and the idea of the ‘reasonable’ seem to be essential aspects of the justification of the theory. If they do not belong to the justification of the theory, it is unclear that we are justified in appealing to them when answering objections to the theory. At any rate, it seems that a simpler version of political liberalism that does not

¹⁴⁶ The first stage gives the principles of justice, while the second stage deals with the application of the theory, that is, with its stability. Says Rawls, “the problem of stability for a democratic society requires that its political conception can be the focus of an overlapping consensus of reasonable doctrines that can support a constitutional regime” (PL 65). Rawls is since PL concerned with the second stage. He takes the principles of justice for granted, and avoids providing a justification for them, given that the principles need to be on hand in order to see whether they are realizable or not.

appeal to such a suspect distinction would be preferable.

Another problematic aspect in Rawls's political liberalism is the fact that the boundaries between the political and the non-political are not sufficiently clear. What aspects of life are ruled by the political conception of justice and why? It seems that Rawls's answer to this question is not sufficiently specific. Clarifying the boundaries of the political will help to develop a satisfactory account on the relationship between the political conception of justice and reasonable / liberal comprehensive doctrines, and thus address the potential discontinuity between our political and non-political lives that political liberalism endorses.

While Rawls's distinction between the political and the non-political is in general terms correct, it is too simple. It has been wrongly interpreted as implying that the political conception of justice simply does not operate in the non-political realm.¹⁴⁷ The theory needs to be expanded in order to clarify how exactly the political conception operates in the non-political; for instance, how far does it go in prohibiting inequalities or unjust behaviors? Clarifying how the political conception operates in the non-political will require analyzing the realm of the social, which in Rawls's design falls entirely within the wide and indistinct non-political realm. This addition to the theory is, however, not meant to broaden the scope of the political, or to dispose of the distinction between the political and the non-political, on which I think Rawls is right. A proper account of the political sphere needs also to fit with our actual experience as citizens, which has recently been severely transformed by the media and the internet. Political

¹⁴⁷ For instance, by feminist theorists and communitarians.

liberalism can no longer ignore the fact that the borders between the political and the non-political (and perhaps even more specifically, the public and the private) are now blurring dramatically in a way unforeseen before. This fact accentuates the importance of the philosophical clarification of the distinction and interaction between the political and the non-political.

2. Revising the Theory of Political Liberalism

Rawls's theory of political liberalism is in general terms correct. Certainly, it contains some unnecessary notions (like the "reasonable") and distinctions (like the one between stages of the theory), and it is not sufficiently clear about important concepts (what is exactly the political?). These problems are however minor and thus in principles easy to solve. I will do this in this section, although a detailed account of the scope of the political is beyond the scope of this dissertation. My only serious concern with Rawls's theory is his refusal to provide an independent argument for the liberal conception of justice. I will deal with this issue in the next section.

Political liberalism requires citizens to converge on the following principles. First, (a) citizens possess certain equal basic rights, liberties, and opportunities. Second, (b) these rights, liberties, and opportunities have priority with respect to the claims of the general good and of particular comprehensive views of the good. Third,

(c) these rights, liberties, and opportunities are not merely formal, so it is necessary to ensure for all citizens adequate means to make effective use of their freedoms.¹⁴⁸ Furthermore, these liberal principles (a), (b), and (c) are purely political. That is, first, (d) they apply to basic political and social institutions, that is, to society's basic structure. They are not meant to govern all aspects of life but primarily the strictly political ones. This stipulation however does not mean that they do not or should not operate beyond the purely political realm. Such an interpretation would be incompatible with the protection of basic rights, which can be violated in the non-political realm. Beyond the political realm the principles work merely as constraints, so to say, in a negative way, insofar as they prevent the violation of the basic rights and liberties, and not in a positive way, insofar as they do not specify a set of actions and behaviors required by the principles of justice. To that extent, the principles that constitute the liberal political conception of justice are consistent with various (comprehensive) views about how to lead a good life. Second, (e) the liberal principles are political also insofar as they are presented and can be justified independently from these various comprehensive views about how to lead a good life.

Citizens and comprehensive doctrines converging on (a) – (e) are liberal in the political sense. As said above, Rawls referred to them as 'reasonable,' yet I do not

¹⁴⁸ I am following closely Rawls's formulation in IPRR 774.

think it is necessary to introduce that notion. The notion of the ‘reasonable’ is otiose insofar as there is already a more basic notion that serves the same purpose, namely, ‘liberal’ (in the political sense).

It is worth emphasizing the relationship between the propositions of the set (a) – (e). (a), (b), and (c) make up the *liberal* conception of justice. (c) specifically accounts for the egalitarian component of liberalism. (d) and (e) make that conception *political*. While (a), (b), and (c) deal with the *content* of the conception, (d) and (e) deal with its *scope*. (d) stipulates that (a), (b), and (c) apply to political and social institutions. (e) stipulates that (a), (b), and (c) can be presented and justified independently from comprehensive doctrines, that is, that there is an independent argument to justify (a), (b), and (c) as valid for the political sphere, that is, as required by (d).

It can however be argued that (b) does not constitute an aspect of the content of liberalism but of its scope. Since (b) stipulates that the “liberal rights have priority with respect to the claims of the particular comprehensive views of the good,” it presupposes a distinction between the liberal conception and comprehensive views of the good. It can therefore be argued that it is (b) that makes the liberal conception political. However, comprehensive liberalism also supports the italicized section of (b). In its classical formulation, liberal values, which called for the protection of individual rights,

were also given priority over religious and other controversial values.¹⁴⁹ The problem with classical (and in general comprehensive) liberalism, is that its liberal values were meant to apply *comprehensively*, thereby making the liberal conception itself controversial. It presupposed views of individualism and autonomy that are themselves object of reasonable disagreement.

My claim that (a), (b), and (c) make up the *liberal* conception of justice, while (d) and (e) make that conception *political* may be questioned. It may be objected that Rawls's comprehensive liberalism as presented in TJ was also meant to apply to the basic structure of society, which means that it also fulfills (d). How then can it be argued that (d) is part of what makes the liberal conception *political*?

The same problem may be seen if someone concludes from what I said that a refusal to accept (d) and (e) would lead to comprehensive liberalism. Since (d) and (e) make the liberal conception political, it might seem that citizens agreeing on (a), (b),

¹⁴⁹ Someone might say that, according to classical liberalism, liberal values did not properly have priority over religious and other controversial values. Politics and religion were seen as separate spheres. From this separateness we cannot conclude that the values of one sphere have priority over the other. Yet the classical liberal was still committed to the view that political rights are not subordinate to religious convictions. *If* political rights conflict with religious convictions, political rights ought to be given priority. While political rights and religious ideas do not conflict very often (and to that extent we still perceive religion and politics as separate realms), in the event of conflict, political rights have priority. They should not be sacrificed even if that is required by religious convictions.

and (c) but not on (d) and (e) would be comprehensive liberals. It is however not true that agreement on (a)-(c) but not on (d) and (e) makes you a comprehensive liberal. First, if someone is a comprehensive liberal (for instance, in the Kantian sense) then she is a liberal with respect to the political *and* the non-political, which entails that she agrees with (d): If (a), (b), and (c) apply to the political and the non-political, then it is true that they apply to the political. Second, it is reasonable to assume that a person supporting comprehensive liberalism would do so on the basis of some argument, for instance the one Rawls presents in TJ. How does this relate to (e)? Will that person be committed to the belief that her (comprehensive) liberal views can be presented and justified independently? Independently from what? we might want to ask. What constitutes an independent presentation and justification? In other words, what exactly does (e) require?

My discussion of the position that comprehensive liberalism might take with regard to (d) and (e) shows that the distinction between comprehensive and political liberalism is not a simple one. It is surely not as trivial as my initial exposition in this section suggested. Rawls did not draw a distinction between comprehensive and political liberalism in TJ¹⁵⁰, and as Burton Dreben has pointed out, “it is not a distinction that is drawn in general by any political or moral philosopher” (Dreben

¹⁵⁰ Rawls acknowledges this in Intro xliii.

2003, 318).¹⁵¹ This distinction has to do with the terms in which the conception of justice is presented and justified, namely with (e).

In general, since comprehensive liberalism supports the application of (a), (b), and (c) to the political and the non-political realm, it seems that the argument that supports it needs to be thicker than the argument in support of political liberalism, which restricts the application of (a), (b), and (c) to the political realm. Comprehensive liberalism needs stronger premises than political liberalism does. This explanation however is not sufficient to distinguish between Rawls's comprehensive liberalism in TJ and his political liberalism.

What differentiates TJ's comprehensive liberalism from its political version is that, although in the former principles of justice were meant to apply only at the basic structure of society, they still provide the "comprehensive moral basis for a just society" (Dreben 2003, 331). TJ's comprehensive liberalism includes thick moral notions and is presented as a "true" theory. Although its principles apply only to the political, their justification appeals to substantial notions that, if accepted, will have great repercussions in our moral (non-political) life. In other words, the notions involved in the presentation and justification of comprehensive liberalism are robust enough to

¹⁵¹ Dreben adds, "to understand what Rawls has been trying to do for the last twenty years requires making sense of this basic distinction between a comprehensive moral doctrine and a political conception" (2003, 318).

impact all sorts of personal and associational affairs, and not just the political ones. It is therefore said that comprehensive liberalism in TJ deals with “the whole truth.” Accepting the thick notions it involves conflicts with different versions of comprehensive liberalism, as well as with non-liberal comprehensive doctrines.

In contrast, political liberalism constitutes a more modest theory whose justification relies on thinner notions that are consistent with various comprehensive doctrines. While they presumably share some premises, the argument for political liberalism would be independent from the argument for comprehensive liberalism insofar as the argument for political liberalism does not necessarily support comprehensive liberalism. In other words, commitment to comprehensive liberalism does not follow from commitment to political liberalism.

The notion of “autonomy” illustrates the shift from comprehensive to political liberalism. In a thin (thus political) sense, autonomy is “the legal independence and assured political integrity of citizens and their sharing with other citizens equally in the exercise of political power” (Intro xlv). A more robust understanding of autonomy (“moral autonomy”) involves a “certain mode of life and reflection that critically examines our deepest ends and ideals, as in Mill’s ideal of individuality, or by following at best one can Kant’s doctrine of autonomy” (Intro xlv-xlv). As Rawls correctly ob-

serves, many citizens reject this more substantial idea of autonomy, while still accepting its thin political sense.

Since political liberalism is justified using weak notions, it is consistent with many comprehensive doctrines. So, what makes a liberal conception *political* is not the just fact that it is applied to the basic structure of society, which counts as a necessary but not a sufficient condition, but that it is justified by appeal to thin notions. To that extent it is freestanding. The liberal political conception is not meant to constitute “the whole truth,” for it relies on notions that are too general to serve other purposes. For this reason Rawls does away with the usual thick understanding of truth and, instead of presenting political liberalism in terms of “truth,” he presents it in terms of “reasonableness,” which constitutes a weaker sense of truth that involves a modest sense of correctness.¹⁵²

Someone might contend that an argument in support of the liberal political conception of justice is not necessary. While it is necessary to present the political conception in independent terms, someone might think that it is not necessary to ground it on an argument, independent or otherwise. As a matter of fact, most people do not

¹⁵² This sense of “reasonable” is different from the other sense that I have suggested to replace with “liberal (in the political sense).” The reason is that in this case I take Rawls to be making an epistemological claim that does not depend on the details of the theory. I have no objections to this usage of “reasonable,” which comes closer to our common use of the term, and that is not redundant.

ask themselves about the justifications of their beliefs. In cases of conflict between the political conception and the comprehensive doctrines, people might examine their reasons for accepting the political conception of justice. While presumably the argument for the political conception rests on notions that are already implied in the political conception, such an argument presents those notions and their implications straightforwardly and in the simplest terms. People might thus find it harder to deny them, even if they are questioning the political conception. Also, as mentioned above, an independent argument in support of the political conception is necessary because the political conception cannot be grounded on comprehensive doctrines if it is going to have priority over them. From both a practical and a conceptual perspective, the argument in support of the political conception of justice grounds the priority of the right over the good.

The priority of the right over the good is an important aspect of the theory of political liberalism that requires clarification. The ‘right’ can be prior to the ‘good’ because the liberal political conception of justice is grounded on an independent argument and not on any comprehensive doctrine. Unlike in Rawls’s political liberalism, no comprehensive doctrine is needed to ground the political conception, which is thus legitimately freestanding. It is certainly true that comprehensive doctrines

might provide *additional* arguments in support of the political conception. Yet political liberalism does not rely on them, just as it does not rely on comprehensive doctrines either. Comprehensive doctrines actually play no role within this revised theory of political liberalism; they merely serve to contrast the political conception of justice with what it is not.

The right is prior to the good insofar as the claims of justice supersede the claims of the good, either of the general good, or of the particular comprehensive views of the good, as stated in (b). The deontological character of liberalism accounts for (b): The priority of the basic liberal rights and liberties is incontrovertible. While this is a theory of political liberalism, which stipulates that the liberal conception applies to basic political and social institutions (see (d)), the protection of individual basic rights and liberties is not restricted to that realm. This position is however consistent with the free exercise of various comprehensive doctrines in the non-political realm. Various views of the good life are consistent with the protection of individual basic rights and liberties, and political liberalism does not have to choose among them.¹⁵³

The right is however *not* prior to the good insofar as the political conception of

¹⁵³ This does not mean that political liberalism is motivated by skepticism towards the views of the good. As observed by Larmore, claiming so suggests that the argument in support of political liberalism is primarily epistemological, while it is actually moral (Larmore 1990, 342).

justice is a moral conception itself. It is not neutral with respect to the good, because it constitutes itself a view of the good, yet a minimal one. Political liberalism endorses a thin view of the good and can thus legitimately be called “minimally perfectionist.” It is only neutral with respect to the good insofar as its minimal view of the good is consistent with various thicker views of the good.¹⁵⁴ So it is only with respect of those views, which agree on political liberalism’s minimal view of the good in the first place, that political liberalism can be considered neutral.

Like Rawls, I think an account of public reason is still necessary. Although citizens converge on a political conception that is supported by an argument that is independent from their various comprehensive doctrines, public discussion about political issues is indispensable because the principles that constitute the political conception of justice include notions that are susceptible of being interpreted in various ways. Even in a formulation that is considerably more detailed than the fairly general one that I have provided, the liberal principles would still be general; they must be because they are “principles.” Moreover, in order to implement actual policies based on these principles it will be necessary to discern what they entail for specific cases and circumstances. The political conception thus needs to be supplemented by a view of public reason that guides public political discussion. Its content should be determined by

¹⁵⁴ In other words, the political conception of justice is not neutral but morally substantive. And while it is morally substantive, it is not comprehensive.

the liberal political conception.

As mentioned above, the distinction between what Rawls has called the “stages” of the theory is not necessary. This however does not entail that I am not concerned with what in Rawls’s view corresponds to the second stage of the theory, namely, the problem of stability. As I have mentioned earlier, I think that the best way to guarantee “stability for the right reasons” is providing a powerful argument in support of political liberalism. That might well be all we can do as philosophers. A powerful argument is, first, a sound one. While the argument is necessarily a normative one, it certainly includes premises about our empirical reality that should be true. It is also, hopefully, a cogent one, that is, one that people can understand to be cogent.

Philosophers work only indirectly in the application of political liberalism. Normative philosophy is meant to illuminate our practical reality. A philosopher develops a theory of justice with the hope that this theory is realizable. However, the correctness of a political conception does not depend on our ability to institute it, just as the correctness of an ethical principle does not depend on one’s ability to follow it. Contingent facts may make a liberal state impossible. This is a dilemma that political philosophers face: While they are at some point interested in the application of principles of justice, the mere fact that they are not realized does not prove them wrong.

I think that this dilemma motivated Rawls's concern with stability, and ultimately, the shift to a strictly political theory. Despite its intrinsic limitations, the contribution of political philosophy is essential: The clearer we get about the meaning and the requirements of justice, the easier it will be to bring about a just world.

3. The Argument for the Political Conception of Justice

As mentioned above, my only serious concern with Rawls's theory of justice is his refusal (explicit in his writings after PL) to provide an independent argument for the liberal political conception of justice.¹⁵⁵ This conception of justice is part of our tradition; citizens holding various comprehensive doctrines agree on it for reasons provided by their own comprehensive doctrines. The fact that there is not an independent moral justification for political liberalism is, first, inconsistent with Rawls's claim that the liberal political conception of justice is a moral view in its own right. If the political conception is a moral view, then we should be able to explain why (in non-sectarian terms).

Second, the fact that there is no independent argument for the political

¹⁵⁵ Rawls states in CP 621-2: "Citizens can have their own grounding [for a liberal political conception] in their comprehensive doctrines, whatever they happen to be. I make a point in *Political Liberalism* of really not discussing anything, as far as I can help it, that will put me at odds with any theologian, or any philosopher." Also quoted *supra*.

conception is problematic because it does not allow for the priority of the right over the good. Rawls claims that the political conception of justice is grounded in the various comprehensive doctrines. But if that is the case, then there is no reason to subordinate the comprehensive doctrines to the political conception given that the comprehensive doctrines ground the political conception in the first place.

Two things need to be said with respect to the argument that should supplement Rawls's theory.¹⁵⁶ First, such an argument is congruent with many things Rawls says (especially in PL) about citizens and their characteristics. This argument would not include any premise that Rawls would disagree with. Rawls has in fact advanced ideas implicit in the argument but just refused to articulate them as an independent argument for the political conception of justice.¹⁵⁷

Second, providing an independent argument in support of the liberal political conception will not make liberalism a comprehensive doctrine as it was in TJ. Rawls is committed to the idea that political liberalism is "political, not metaphysical." I think he is right about that, and that an argument for the political conception of justice does not need to be presented in metaphysical terms or appealing to notions of truth that

¹⁵⁶ Besides the argument that is independent from the various comprehensive doctrines, there might well be (and certainly there are) other arguments for the liberal political conception of justice that are based on specific comprehensive doctrines.

¹⁵⁷ As mentioned in the first chapter, Rawls says that he does not need an independent argument, and that it "will cause division from the start" (CP 621).

citizens might disagree with. More than “adding” to Rawls’s theory, my project is one of making explicit and giving a special status to notions and ideas he proposed.¹⁵⁸

3.1 Larmore’s “Moral Footing of a Freestanding Politics”

Charles Larmore has also observed that Rawls has not brought out political liberalism’s distinct moral foundation (1999, 606, 609-10). He has thus proposed a moral foundation for political liberalism. Larmore focuses on what he calls the “liberal principle of political neutrality,” where neutrality is not understood as neutrality with respect to morality, for this principle is a moral one, but as neutrality with respect to controversial views of the good life. “In a liberal political order, political principles are

¹⁵⁸ In “Relativizing Rawls,” Lloyd states,

I have said that Rawls does not provide a complete set of shallow arguments for the truth of the fundamental intuitive ideas that form the starting point of the theory. Perhaps he has not fully appreciated the power of shallow philosophical resources available to him, or perhaps he has just assumed others would naturally deploy these resources in elaborating his argument. However this may be, he does at least implicitly offer a sketch of how arguments might proceed” (1994a, 730).

Lloyd uses the terms “shallow” and “deep” to refer to what I call “thin” and “thick.” She maintains that, in order to develop a shallow argument for the liberal political conception, it is helpful to review the ordinary arguments that Rawls presents against illiberal positions in TJ (section 12), as well as Rawls’s discussion of how an overlapping consensus develops in PL. Lloyd however does not propose such a shallow argument for the liberal political conception.

to be “neutral” with respect to controversial ideas of the good” (1990, 341).¹⁵⁹

Larmore proposes a justification for the principle of political neutrality. He wants to avoid the justification provided by classic liberals, like Kant and Mill, which appealed to the ideals of autonomy and individuality, because such justification is controversial. It has been considered individualistic by various philosophers who have emphasized the importance of traditions. Political liberalism, Larmore argues, needs to avoid the dispute between individualism and tradition. It can be seen as a point between two extremes; one is basing political neutrality on individualistic ideas, and the other one is basing it merely on “solely strategic considerations” (1990, 346). With respect to this alternative, Larmore says, “This approach is basically a Hobbesian one, since it aims to ground a moral principle (neutrality) on non-moral, purely prudential motives” (1990, 346).¹⁶⁰ In the Rawlsian terminology I have been using, political liberalism is the point between comprehensive (“individualistic”) liberalism, and liberalism that lacks of a foundation.

Larmore proposes a middle point: Grounding the principle of neutrality in a

¹⁵⁹ By controversial ideas Larmore means the sectarian views that are part of comprehensive doctrines.

¹⁶⁰ In this scenario, Larmore specifies, “individuals who have different ideals of the good life, but are roughly equal in power, may strike a bargain, according to which the political principles to be established will not favor any of these rival ideals” (1990, 346). This scenario resembles what Rawls calls *modus vivendi*.

minimal moral conception, which corresponds to what I have referred to as providing an “independent” (certainly moral) argument.¹⁶¹ Larmore’s justification relies on the two norms of rational dialogue and equal respect. The norm of rational dialogue stipulates that

in order to solve some problem (...) people should respond to points of disagreement by retreating to neutral ground, to the beliefs they share, in order either to (a) resolve the disagreement and vindicate one of the disputed positions by means of arguments which proceed from this common ground or (b) bypass the disagreement and seek a solution of the problem on the basis simply of this common ground (1990, 347).

However, this norm is not sufficient to justify the liberal principle of neutrality because it takes for granted that people will talk to resolve their disagreements, but “it does not rule out resorting to force, instead of discussion, to achieve a political settlement” (1990, 348).

The additional norm of equal respect is therefore necessary. This norm is similar to the Kantian rule that we should always treat other persons as ends, and never

¹⁶¹ Larmore also acknowledges that there might be some other justifications for liberal neutrality. He adds,

To those who prize the values of autonomy and individuality, for example, Kant and Mill may well have given cogent reasons for adopting the liberal principle. The special virtue of the justification I propose is that it is a minimal one. It appeals to elements of core morality. It can be accepted even by those who are convinced that autonomy and individuality have serious drawbacks and that much of what makes life worth living is less a matter of choice than of tradition (1990, 347)

only as means. Larmore distinguishes between political principles, which are the ones with which we think people can be rightly forced to comply, and non-political principles, which are the ones that we do not think are valid objects of enforcement.¹⁶² Forcing people to comply cannot in itself be wrong, for that would make political association impossible. What the norm of equal respect prohibits, is resting compliance only on force. Says Larmore, “If we try to bring about conformity to a rule of conduct solely by the threat of force, we shall be treating persons merely as means, as objects of coercion, and not also as ends, engaging directly their distinctive capacity as persons” (1999, 607). He adds, “To respect a person as an end is to insist that coercive or political principles be as justifiable to that person as they are to us. Equal respect involves treating all persons, to which such principles are to apply, in this way” (1990, 349; rephrased in 1999, 608).

Larmore specifies that he departs from Kant’s ethical theory in two important ways. First, he emphasizes the dialogical dimension of treating people as ends in themselves. Second, he ties the norm only to the acceptability of coercive principles and not of moral principles in general (1990, 349).¹⁶³ This second departure is essential for the argument not to be “individualistic” or, using Rawlsian terminology, for it not to

¹⁶² See Larmore 1990, 348 and 1999, 606-7.

¹⁶³ That is, the norm is not tied to the acceptability of the non-political principles that are not valid objects of enforcement.

constitute a comprehensive liberalism.

Larmore's theory should not be confused with Habermas's because of its dialogical component. Larmore explicitly criticizes Habermas's discourse theory because Habermas's notion of ideal discussion rests on a postmetaphysical critique of reason that is itself sectarian. In Habermas's view, Larmore states, "Reason itself (...) now presents itself as essentially finite, fallible, procedural, and oriented to intersubjective agreement" (1999, 614). Therefore, "reason can invoke no higher authority than agreement under ideal conditions" (Larmore 1999, 614). Habermas's ideal discussion presupposes a view about reason that is itself controversial. As a sectarian view (like for instance Mill's individualist liberalism) it cannot provide a moral footing for our political life (1999, 611-22).

In general, Larmore contends that the problems with Habermas's theory are analogous to Rawls's. Both miss the moral basis that support their theories. Habermas maintains that political autonomy is the ultimate basis of the principles of political association; political autonomy does not rely on any antecedent moral norms. However, as Larmore points out, "his [Habermas's] conception of political autonomy makes sense only on the assumption that self-rule rests on an underlying, moral norm of respect.

(...) For only on such a moral basis can popular sovereignty take the form that we prize as modern democracy” (1999, 617).

Although Habermas declares that political autonomy does not rely on pregiven moral norms, he appeals to the discourse principle D, according to which norms are valid if the affected persons can agree on them as participants in rational discourses. However, Larmore contends, D is not a morally neutral but has significant moral content. Says Larmore, “If we believe our political life should be organized by some principle such as D, that is only because we embrace the moral principle of equal respect for persons” (1999, 622). Larmore therefore claims that “Habermas (...) misunderstands himself” (1999, 617). His appeal to principle D is inconsistent with his claim that political autonomy does not rely on any antecedent moral norm.

3.2 Discussion of Larmore’s Theory

Larmore’s “minimal” justification of liberal neutrality relies on the *two* norms of rational dialogue *and* equal respect. But the norm of rational dialogue is problematic. While it is clear that it is not sufficient, Larmore has given us no reason to believe it is even necessary. He seems to acknowledge that. In Larmore 1999, his argument only

relies on the norm of equal respect (Larmore 1999, 607-8).¹⁶⁴

My disagreement with Larmore is however not connected to the norm of rational dialogue. I have summarized the liberal conception of justice in three statements, (a), (b), and (c), and proposed two additional statements which make this liberal conception a properly political one, namely (d) and (e). (d) stipulates that (a), (b), and (c) apply to the political, and (e) demands that (a), (b), and (c) can be presented and justified independently from the comprehensive doctrines. Larmore proposes an argument for what he calls “liberal neutrality” that is “minimal” or independent from comprehensive doctrines, which means that he is concerned with (e). Larmore focuses on (e) but he does not provide any details about the liberal conception he is justifying. Yet his argument yields a liberal conception that differs from what I have proposed

¹⁶⁴ Furthermore, I think that Larmore’s norm of rational dialogue does not constitute a proper foundation for liberal neutrality. This norm is purely pragmatic insofar as it stipulates that retreating to a neutral ground is necessary in order to “(a) resolve the disagreement and vindicate one of the disputed positions by means of arguments which proceed from this common ground or (b) bypass the disagreement and seek a solution of the problem on the basis simply of this common ground” (Larmore 1990, 347). Both (a) and (b) constitute pragmatic but not moral justifications. It is not clear then to what extent Larmore’s own approach would be different from the one he is criticizing in the following quote: “This approach is basically a Hobbesian one, since it aims to ground a moral principle (neutrality) on non-moral, purely prudential motives” (1990, 346). With respect to (b), Larmore adds, “if the people still wish to solve the given problem, and if they are committed to solving it through rational discussion, then *they have no choice* but to find the solution on the basis of the beliefs they share” (1990, 348, my emphasis).

under (a), (b), and (c). Our differences are related to what in my scheme corresponds to (d), that is, to the realm where the political principles ought to be applied.

As part of his argument, Larmore distinguishes between political and non-political principles, which is a presupposition for (d). Since (d) states that (a), (b), and (c) apply to the political, it is necessary to distinguish the political from the non-political. For Larmore the political is coextensive with the coercive. The identification of the political with the coercive does not constitute a trivial aspect of his theory. It plays an essential role in his argument because the norm of equal respect is defined as applying to coercive principles.¹⁶⁵

However, if ‘political’ is understood as synonymous with ‘coercive,’ it will not be possible to account for the Rawlsian liberal conception. Specifically, it will not be possible to account for (c), its egalitarian component. Following Rawls, I have defined the “political” as the basic structure of society that includes basic political, social, and economic institutions. Coercion is therefore only one element of the political.¹⁶⁶

Since Larmore reduces the political to the coercive apparatus of society, he justifies a different political conception that would not necessarily be liberal according

¹⁶⁵ Says Larmore, “To respect a person as an end is to insist that *coercive or political principles* be as justifiable to that person as they are to us” (1990, 349, my emphasis).

¹⁶⁶ The state promotes health, education, safety, etc. These are not part of the coercive even if aspects of them might involve coercion.

to my previous characterization. The reason that this is not obvious is that he focuses on neutrality, that is, on what makes liberalism political as opposed to comprehensive (or individualistic, according to his own terminology). He certainly sees himself grounding “*liberal* neutrality.” But why does Larmore look for an argument for liberal neutrality instead of looking for an argument for the liberalism as restricted to the political sphere? He assumes that the justification of political liberalism is no different from the justification of the moral principle of political neutrality. However, it seems that it is possible to be committed to political neutrality and not agree with the liberal conception of justice. While only a *political* version of liberalism has been the subject of academic discussion, it is possible to conceive of other conceptions of justice being restricted to the political sphere, for instance, “political utilitarianism.” In fact I think Larmore’s position (unintentionally) justifies political libertarianism¹⁶⁷ given that his argument neither assumes nor yields the egalitarian component of liberalism.¹⁶⁸

Why does Larmore’s identification of ‘political’ with ‘coercive’ prevent his theory from incorporating the egalitarianism that is essential to a liberal conception of justice? In order to ensure for all citizens adequate means to make effective use of their

¹⁶⁷ In Intro viii Rawls explicitly says that libertarianism is not liberal.

¹⁶⁸ While the norm of equal respect can in principle yield the egalitarian component of political liberalism, it will only possible to do so if the political is not restricted to the coercive.

freedoms, that is, in order to fulfill (c) and thereby account for the egalitarian component of liberalism, the conception of justice must apply to basic political and social institutions and not merely to the coercive apparatus of society. For instance, in order to ensure that all citizens have adequate means to make use of their freedoms, it will be necessary to have universal health coverage. Yet the public health system is not part of the coercive apparatus of society. Institutions like these are political insofar as they are necessary to guarantee the effectiveness of essential rights and liberties of citizens. This is consistent with Rawls's claim that the subject of justice is society's basic structure.¹⁶⁹ If 'political' is identified with 'coercive,' the reach of justice will be reduced to the point that it will not possibly include social and economic equality.

Finally, one might try to object that Larmore's argument for neutrality does not really constitute an argument in support of the liberal political conception. In fact he concludes that because of the norm of equal respect, coercive or political principles

¹⁶⁹ G.A. Cohen has also interpreted Rawls's idea of society's basic structure as the coercive apparatus of society (1997). Cohen claims that Rawls does not define the basic structure of society consistently. Sometimes, Cohen maintains, the basic structure of society is understood as the legally coercive structure of society, while in some other cases it includes, besides the coercive apparatus, other institutions based on the profoundness of their effects. Cohen contends that, for the theory to be egalitarian, the principles of justice need to apply beyond the coercive structure. While I think Cohen is right to say that the application of the principles of justice should not be restricted to the coercive structure, I think he is wrong about Rawls's idea of society's basic structure. Cohen misunderstands it as a sort "list of institutions," each of which is *internally* ordered by the principles of justice. See first chapter as well as Lloyd 1995.

should be *justifiable* to each person as they are to us. Yet proving that political principles should be justifiable is different from offering an actual justification for them.

This objection is based in a misunderstanding. To claim that x is justifiable to all on the basis of some norm is equivalent to saying that *if* someone accepts that norm, x will be justified to her.¹⁷⁰ Therefore, Larmore's argument that political principles are justifiable to any person because of the norm of equal respect is ultimately a justification for political principles, insofar as he is showing that any person would, based on the norm of equal respect, be justified in accepting them.¹⁷¹

3.3 A Moral Foundation for (Egalitarian) Political Liberalism

How can Larmore's argument be supplemented so it justifies a liberal political conception that is egalitarian? What sort of independent argument can we provide as a justification for the liberal conception, as applicable to the political sphere, namely to the basic structure of society? On what terms can we argue for (a), (b), and (c) so they

¹⁷⁰ To that extent, it can be claimed that the structure of Larmore's argument is similar to Rawls's hypothetical agreement in TJ. See next section.

¹⁷¹ Certainly, if the person does not accept the norm of equal respect, then political principles may not be justified for her. This is however not distinctive of Larmore's argument but true about any argument: If someone does not accept the truth of its premises, the argument will not be sound for her.

apply to the basic structure of society, and are not robust enough to govern all the facets of life?

The “political” is constituted by the basic structure of society, which Rawls defines as “society’s main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next” (PL 11). The basic structure of society is the subject of justice because of the profoundness of its effects in citizens’ prospects of life.¹⁷² Says Rawls, “The role of the institutions that belong to the basic structure is to secure *just background conditions* against which the actions of individuals and associations take place” (PL 266, my italics). Conditions resulting from individual voluntary actions will be just only if there is “background justice.”¹⁷³

It is necessary to apply the liberal political conception to the basic structure of society in order to guarantee equality. It is a fact that human beings are equal. From the fact of equality results the initial (thin) normative claim that all persons are in principle entitled to the same benefits. Given that human beings are by nature equal, no person is then justified in claiming for herself a benefit merely because of her particular

¹⁷² See TJ 7; also discussed in chapter 1.

¹⁷³ See PL 266-7.

nature.¹⁷⁴

While equality results in a normative claim, it is still an extremely thin one. All dogs are also equal. No dog deserves because of its mere nature something that another dog does not deserve. The fact of equality does not specify any particular treatment to human beings; it merely stipulates that, other things being equal, all human beings should be treated equally. All human beings are, because of their nature, entitled to equal benefits; just like all dogs would be, because of their nature, entitled to equal benefits.¹⁷⁵ The fact that human beings are equal does not make them any better than dogs, given that it is also a fact that all dogs are equal, too.¹⁷⁶

What distinguishes human beings from dogs is their moral power. Rawls has

¹⁷⁴ This rationale is reminiscent of Thomas Hobbes's claims in the *Leviathan*: It is a fact of nature that human beings are equal with respect to both mental and bodily faculties. Despite the fact that there are some differences, "when all is reckoned together, the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he" (*Leviathan* XIII.1, A.P. Martinich's edition).

¹⁷⁵ See also John Locke's claims in the *Second Treatise*: "A State also of *Equality*, wherein all the Power and Jurisdiction is reciprocal, no one having more than another: there being nothing more evident, than the Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another without Subordination or Subjection" (*The Second Treatise of Government* II.4, Peter Laslett's edition).

¹⁷⁶ A.P. Martinich observes in an unpublished article entitled "Against Equality" (ms.) that "equality" is an incomplete notion. It is taken to refer to the intrinsic moral value of human beings. Yet, Martinich states, "equality" can only signify the intrinsic moral value in a stipulative sense.

referred to this as a capacity for a sense of justice and for a conception of the good.¹⁷⁷

In general terms we can say that human beings have the moral power to have life plans and assess actions in normative terms.¹⁷⁸ These plans of life are essential to people's happiness. This particular feature of human beings accounts for our moral dimension and grounds our equal moral worth. In virtue of their moral worth human beings deserve a special (equal) treatment¹⁷⁹, which requires the protection of our freedom.

Human beings' moral power gives substance not just to equality, but also to freedom.¹⁸⁰ Human freedom is a value precisely because of the human moral power. For that reason we do not consider freedom a value for other animals, for instance, ants. While we usually refer to freedom as a primary value, it is only possible to make sense of it by assuming a more essential value, which is persons' moral worth based on their moral powers. The variety of life plans and conceptions of the good, which lead

¹⁷⁷ In PL Rawls presents these two moral powers as what makes persons reasonable, and rational, respectively. For the sake of simplicity, and in order to keep the justification as thin as possible, I will avoid the details about persons' moral powers. Rawls correctly observes that we only need these capabilities to a minimum degree. He adds "as always, no differences in basic capabilities (within the normal range) affect persons' equal basic rights and liberties" (2001, 171).

¹⁷⁸ Says Rawls, "They can understand, apply, and act from the two kinds of practical principles" (PL 108).

¹⁷⁹ We can refer to the latter in Kantian terms: Human beings are ends in themselves and thus cannot be treated as mere means to other person's ends.

¹⁸⁰ Rawls states in PL, that persons are equal and free in virtue of their two moral powers for a sense of justice and a capacity for a conception of the good (PL 19).

persons to different ends, and to different ways of prioritizing their ends, is a result of the free exercise of persons' moral power. These various plans of life or conceptions of the good are not necessarily individual or individually chosen, but usually social and resulting from a communal tradition.

The common grounding of freedom and equality on a basic idea of moral worth reveals the interrelation between both. In order for persons to be genuinely free, as opposed to free in a purely formal sense, it is necessary to guarantee that what they achieve in life depends on their voluntary actions, and not on arbitrary effects of the natural lottery. Genuine freedom therefore requires equality. The idea of persons' moral worth does not lead to the libertarian freedom as mere non-interference, but to "effective" freedom that is necessarily egalitarian.

The moral worth of persons that grounds freedom and equality is the essential moral idea on which liberalism rests. It grounds the Rawlsian liberal conception of justice I have presented, including its egalitarian component. Rawls himself has advanced the key normative idea of the moral worth of persons, and related it to the liberal values of freedom and equality. He has however refused to articulate them in terms of an independent moral argument in support of political liberalism. I want to make it explicit now.

Persons have moral worth because they have the moral power to have plans of life that are essential to their happiness. Since human beings are equal, they have equal moral worth. Reason does not distinguish between the happiness of different persons. Persons' equal moral worth demands equal respect. Equal respect entails two things, the first of which is no (actual or potential) interference with persons' plans of life. Second, equal respect demands ensuring equal actual opportunities to pursue persons' life plans. Opportunities should not be merely formal; all citizens should have adequate means to make effective use of their freedoms.

The correlative concepts of equal moral worth and equal respect thus ground the equal basic rights, liberties, and opportunities that citizens possess, namely (a). Equal respect also requires that these basic rights, liberties, and opportunities be not subordinated to the general wellbeing or to private plans of life or conceptions of the good of other citizens, which means that they should be given priority with respect to the collective or individual claims of good, that is, (b). Finally, equal respect also necessitates adequate means for all citizens to make use of their rights, liberties, and opportunities, namely (c).¹⁸¹ As already discussed, (d) requires that the conception

¹⁸¹ In *Justice as Fairness. A Restatement*, as part of Rawls's revision of his index of primary goods, he takes into account "the capabilities of citizens as free and equal persons in virtue of their moral powers" (2001, 169). He emphasizes the normative character of the list of primary good: "While the list of primary goods rests in part on the general facts and requirements of social life, it does so only together with a political conception

constituted by (a), (b), and (c) be applied (at least) to the political understood as the basic structure of society. However, we do not have any justification to apply it beyond the political. Doing so would go against the priority that individual liberty has as stipulated by (b). This argument, as well as (a), (b), and (c) themselves, has been presented in terms that are independent from any particular comprehensive doctrine, which means that (e) is fulfilled.

It should be clear that this is an argument for political and not for comprehensive liberalism. There is no need for an extra justification for the fact that it grounds only political liberalism. Contrary to Larmore's suggestion, the strict political character of liberalism does not need to be guaranteed through a previous demarcation of the political. Such a previous demarcation of the political will not guarantee that the

of the person as free and equal, endowed with the moral powers, and capable of being a fully cooperating member of society" (2001, 58). Rawls relates the primary goods directly to the demands of justice:

- (i) The equal political liberties (...) are necessary for the development and exercise of citizens' sense of justice and are required if citizens are to make rational judgments in the adoption of just political aims and in the pursuit of effective social policies.
- (ii) The equal civil liberties (...) are necessary for the development and exercise of citizens' capacity (...) to form, to revise and rationally to pursue what one views as worthwhile in human life (...)
- (iii) Income and wealth are general all-purpose means required to achieve a wide range of (permissible) ends, whatever they may be, and, in particular, the end of realizing the two moral powers and advancing the ends of the (complete) conceptions of the good that citizens affirm or adopt (2001, 169).

theory applied to that sphere be a strictly political theory, for, as we have seen, TJ was also applied to the political and still constituted a comprehensive doctrine. What makes the theory “political” is not only that it does not apply to the political sphere (in whatever terms that is defined), but the fact that it is presented and justified in thin terms.

The liberal political conception and the argument in its support have been presented in political terms, namely, in terms that are too thin to constitute an all-encompassing guide for all the aspects of our moral life. The conception of the moral worth of persons is thin because it does not encompass an idea of where moral ideas comes from (community or individual), nor an idea of what persons ought to do based on their moral powers. It is clearly insufficient to constitute a comprehensive moral doctrine itself, and thus thin enough to be neutral towards sectarian views. It is however sufficiently robust to provide a moral grounding for political liberalism.¹⁸²

Consensus cannot legitimize the liberal conception of justice because very often in history people have agreed on immoral views. The liberal conception is justified because there are moral reasons that support it in the first place. That, however, does not mean that I think that Rawls was wrong in developing his theory in contractarian terms. He did not opt for an actual but for a *hypothetical* agreement in TJ. The good

¹⁸² Rawls therefore said that it is not just an idea of persons *as citizens*.

thing about a hypothetical agreement is that it is not an actual agreement in the first place.¹⁸³ What matters about Rawls's hypothetical agreement is not the fact that we would actually agree, but the fact that we would have valid reasons to agree. To that extent, the appeal to a hypothetical agreement is tantamount to saying that *if* someone reflects under particular constraints (accepting certain essential premises) she will agree on certain principles. This is then another way of saying that there is an independent argument in support of these principles, namely, one that does not depend on sectarian beliefs people might have.

Someone might object that Rawls's hypothetical agreement amounts to more than what I have suggested here, insofar as he stipulates a particular condition, the original position, in which parties would hypothetically agree on principles of justice. The essential aspect of the original position is that parties are judging objectively insofar as they are behind a veil of ignorance. They are therefore said to arrive at the principles of justice without any previous idea of justice, but merely reasoning in a self-interestedly way. However, the ideas of freedom and equality that are essential to the principles do not *result* from the original position but justify the design the original

¹⁸³ See Larmore 2003, 369-75. Referring to a similar critique made by Richard Dworkin in *Taking Rights Seriously*, Larmore states: "To claim that certain principles are valid because they would be the object of rational agreement is a roundabout way, he [Dworkin] argued, of saying that they are valid because there is reason to accept what they assert" (Larmore 2003, 370).

position in the first place. The ideas of freedom and equality shape the constraints that the original position entails. For instance, the veil of ignorance presupposes the idea that the equal moral worth persons does not depend on the morally irrelevant characteristics that are left behind the veil of ignorance. The constraints on the original position are then acceptable only on the assumption that we accept the idea of the moral worth of persons, and its consequent notions of freedom and equality. In other words, one needs to buy certain key ideas in order to go through the device of representation that the original position constitutes.¹⁸⁴

Nonetheless, Rawls's original position constitutes a valuable contribution to political philosophy, because of its ability to demonstrate the correctness of the liberal political conception. It makes it possible to get people to see the rationale for it. People

¹⁸⁴ Although Rawls himself did not refer to the original position as a thought experiment, what he says comes close to it: "One way to look at the idea of the original position (...) is to see it as an expository device which sums up the meaning of these conditions [the ones embodied in the description of the original position] and helps us to extract their consequences" (TJ 19). And: "We can by deliberately following the constraint it [the original position] expresses *simulate the reflections of the parties*" (TJ 104, my emphasis). Rawls adds, "*we are to imagine* that those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits" (TJ 10, my emphasis). Rawls specifies, "This original position is not thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice" (TJ 11). In PL Rawls states, "the original position is simply a device of representation" (PL 25), and compares it to role playing (PL 27).

wedded to sectarian views are as a rule not used to reasoning independently.¹⁸⁵ So, while the original position serves a purpose that is different from the one Rawls envisioned, it serves one that Rawls himself considered important, because he acknowledged that aspects of moral psychology are relevant for the stability of political liberalism.

4. The Charge of Perfectionism

As mentioned earlier, Rawls's political liberalism can be considered perfectionist *to the extent* that it included a thin theory of the good. Since my version of political liberalism is thicker than Rawls's political liberalism because it encompasses an independent argument in support of the political conception, it is even more perfectionist than Rawls's. However my view is neither fully perfectionist nor comprehensive.

Feminist theorists and communitarians have mistakenly assumed that theories are either (fully) perfectionist or espouse complete neutrality. However, since normative theories necessarily encompass at least a thin view of the good, as illustrated

¹⁸⁵ As a further response to communitarian thinkers, it can be said that we need the veil of ignorance precisely because we are too embedded in our traditional practices and our place in society.

by Rawls's thin political liberalism, no normative theory can be completely neutral with respect to views of the good. Also, there are different degrees of perfectionism. Different theories can obviously include different more or less complete characterizations of the good life, and to that extent they will be more or less perfectionist. A theory can therefore be (partially) perfectionist and leave many issues open; so perfectionism is consistent with pluralism. Political liberalism is neither fully perfectionist or completely neutral with respect to the good life.

While a mere charge of perfectionism would be trivial, it seems that a non-trivial objection can be raised. Political liberalism's view that the state is neutral towards (liberal) comprehensive doctrines seems to suggest that the state cannot legitimately promote one of these comprehensive doctrines over others. However, given what I have said about the relationship between political and comprehensive liberalism, it seems that it would be "easy" for comprehensive liberals to be political liberals. To that extent it can be maintained that comprehensive liberalism is a favored view in a political liberal regime. Furthermore, if that is the case, then it seems that political liberalism inevitably transforms into comprehensive liberalism because it favors comprehensive liberal views; so over a long period of time only those will be present. That means that, although according to political liberalism it is only necessary

to be liberal with respect to the political, we can presume that eventually citizens will be liberal also with respect to the non-political. For instance, as part of the political education of future citizens, it will be necessary to familiarize them with the liberal political conception as well as with the argument in its support. As a result of such education, it is then plausible that those future citizens end up developing the political conception into comprehensive liberalism, that is, being liberal both with respect to the political and the non-political.¹⁸⁶

Yet if it is true that over time some comprehensive doctrines are favored over others, then it turns out that political liberalism is not essentially political, but merely temporarily political. It eventually becomes a comprehensive theory. Someone could then object that political liberals do not genuinely accept various comprehensive doctrines in the non-political sphere, but only insofar as these doctrines are eventually

¹⁸⁶ Paul Weithman has also discussed the impact of political liberalism on non-political ideas and beliefs, particularly with respect to religious ones. In his “Taking Rites Seriously,” he asks “whether political liberalism fosters a culture of disbelief” (1994, 275), and specifies that this

is not a question about the religious or secular character of the *public* culture. It is instead the question of whether Rawls’s liberalism, if embodied in practice, would encourage the decline of religious organizations, or would encourage people engaged in the process of balance and reconciliation to misunderstand, trivialize or reject religion, or to accord it increasingly less importance in their lives (1994, 275-6).

Weithman focuses on Rawls’s treatment of public reason in PL, and argues that political liberalism does foster a culture of disbelief “by the theory fostering misunderstanding of the way in which religious aims are related to political ones” (1994, 288). He also argues that it is possible to correct Rawls’s theory so its practice fosters a culture in which religion is correctly understood.

expected to transform into comprehensive liberalism.

The political conception in fact requires a lot from the comprehensive doctrines. Its impact on the comprehensive doctrines is both synchronic and diachronic.¹⁸⁷ It is diachronic because it seems to be, at least in the long run, powerful enough to affect comprehensive doctrines, at least as a result of education. Synchronically, the political conception also affects the comprehensive doctrines insofar as the demands of the political conception invariably supersede the demands of the comprehensive doctrines. They thus need to adjust to the political conception. This is certainly not an easy requirement.¹⁸⁸ In order to subordinate their comprehensive doctrines to the political conception, it will not suffice to expect the conception merely to be compatible with the comprehensive doctrines. Citizens will not subordinate their comprehensive doctrines to the political conception unless they are genuinely convinced of the value of such a conception, and this conviction is more likely to occur if there is an independent

¹⁸⁷ In *Law of Peoples*, Rawls discusses says how liberal societies can over time shape non-liberal societies. His discussion is however very different from the one I am pursuing here. Rawls maintains that the liberal political conception might (through sanctions or otherwise) gradually change other non-liberal conceptions. While he is dealing with the influence of liberal political conceptions on non-liberal *conceptions*, I am considering here the impact of the liberal political conception on non-liberal *comprehensive doctrines*, that is, whether citizens that already hold a liberal political conception but a non-liberal comprehensive doctrine, might eventually hold a comprehensive liberal doctrine. See Rawls 1999, 59-62.

¹⁸⁸ The political conception is then not, as Rawls suggested, comparable to a “module” that fits easily with most views.

argument supporting it. Yet if the political conception requires so much from the comprehensive doctrines, then there will be fewer “liberal” comprehensive doctrines than the number of “reasonable” comprehensive doctrines that Rawls envisioned.

The fact that political liberalism seems to tend over time towards comprehensive liberalism should not be problematic for political liberalism. First, this *possible* scenario is consistent with guaranteeing stability, for the right reasons, of political liberalism. Just as it does not make sense to reject a theory of justice because people happen not to follow the principles it stipulates, it does not make sense to reject a theory of justice because following its principles might lead to another situation that contains nothing intrinsically wrong. Even if this situation would result, there will be a great deal of diversity about the good life because there is not a single unified view of comprehensive liberalism. While it might end up being the case that citizens are liberal with respect to the political and the non-political, their non-political liberal views will continue to differ. Some might be liberal in the Kantian sense, others in the Millian sense, others in the Lockean sense, and so on. They will hold different versions of comprehensive liberalism. Differences about ways of life are unavoidable and even desirable for a democratic society.

Second, even if it turns out that in the long term all citizens endorse comprehensive liberalism, that does not mean that the political conception should become

thicker. Since the reasons for supporting *political* liberalism are essentially moral and not pragmatic, the fact that there is a consensus on comprehensive liberalism does not justify expanding the political conception, because the reasons for having a strictly political conception were not based on an agreement in the first place, but on an independent argument in support of such conception. In other words, political liberalism is not contingent on the circumstances, but justified on moral grounds. The fact that the circumstances change is then not a justification for getting rid of *political* liberalism. Moreover, as said in the first chapter, comprehensive doctrines are fifth wheels. It is irrelevant whether citizens are liberal with respect to the non-political; all that matters is that they are liberal with respect to the political. The political liberal conception should still be presented and justified by appealing to thin notions that are consistent with various liberal doctrines, whether in the political or the comprehensive sense.

5. Final Remarks

The articulation of Rawls's ideas in terms of an independent argument for the liberal political conception improves the theory insofar as the problems mentioned above will be solved. The general account of political liberalism I have presented is certainly still incomplete. For instance, a detailed account of what equality demands will illuminate exactly how inclusive the political sphere ought to be, that is, specifically what constitutes the basic structure of society. The modified theory of

political liberalism is slightly thicker than Rawls's initial version insofar as it includes an independent argument in its support, but it is not thereby so thick as to stop being political. In other words, its resulting thickness will not make liberalism a comprehensive theory.

Bibliography

Bell, Daniel. 2005. "Communitarianism." In: Zalta, Edward (ed.) *The Stanford Encyclopedia of Philosophy*, URL = <http://plato.stanford.edu/archives/spr2003/entries/republicanism>

Benhabib, Seyla (ed.) 1996. *Democracy and Difference. Contesting the Boundaries of the Political*. Princeton: Princeton University Press.

Benhabib, Seyla. 1997. "The Generalized and the Concrete Other: The Kohlberg-Gilligan Controversy and Moral Theory." In *Feminist Social Thought: A Reader*, 736-756. Ed. by Diana T. Meyers. New York: Routledge.

Benhabib, Seyla and Drucilla Cornell (eds.) 1987. *Feminism as a Critique: On the Politics of Gender*. Minneapolis: Minnesota University Press.

Berlin, Isaiah. 1958. *Two concepts of liberty*. Oxford: Clarendon Press.

Boesche, Roger. 1998. "Thinking about Freedom." In: *Political Theory* 26(6), 855-73.

Brown, Wendy. 1995. *States on Injury. Power and Freedom in Late Modernity*. Princeton: Princeton University Press.

Calhoun, Craig (ed.) 1992. *Habermas and the Public Sphere*. Cambridge Mass. and London: The MIT Press.

Christman, John. 1998. "Republicanism: A Theory of Freedom and Government. Philip Pettit." In: *Ethics* 109(1), 202-6.

Cohen, G.A. 1997. "Where the Action is: On the Site of Distributive Justice." In: *Philosophy and Public Affairs* 26(1), 3-30.

Cohen, G.A. 2000. *If You're an Egalitarian, How Come You're So Rich?* Cambridge Mass.: Harvard University Press.

Daniels, Norman. 1985. "Spheres of Justice: A Defense of Pluralism and Equality. Michael Walzer." In: *The Philosophical Review* 94(1), 142-8.

Daniels, Norman. 2003. "Democratic Equality: Rawls's Complex Egalitarianism." In *The Cambridge Companion to Rawls*, 241-76. Ed. by Samuel Freeman. Cambridge: Cambridge University Press.

De Francisco, Andrés. 2006. "A Republican Interpretation of the Late Rawls." In: *The Journal of Political Philosophy* 14(3), 207-88.

Dreben, Burton. 2003. "On Rawls and Political Liberalism." In *The Cambridge Companion to Rawls*, 316-46. Ed. by Samuel Freeman. Cambridge: Cambridge University Press.

Fisk, Milton. 1993. "Community and Morality." In: *The Review of Politics*. 55(4), 593-616.

Fraser, Nancy. 1997. *Justice Interruptus: Critical Reflections of the "Postsocialist" Condition*. New York and London: Routledge.

Freeman, Samuel (ed.) 1999. *John Rawls. Collected Papers*. Cambridge Mass. and London: Harvard University Press.

Freeman, Samuel. 2003. "Introduction: John Rawls – An Overview." In *The Cambridge Companion to Rawls*, 1-61. Ed. by Samuel Freeman. Cambridge: Cambridge University Press.

Gilligan, Carole. 1982. *In a Different Voice: Psychological Theory and Women's Development*. Cambridge Mass.: Harvard University Press.

Gutmann, Amy. 1985. "Communitarian Critique of Liberalism." In: *Philosophy and Public Affairs*. 14(3), 308-22.

Gutmann, Amy and Dennis Thompson. 1996. *Democracy and Disagreement*. Cambridge Mass. and London: Harvard University Press.

Habermas, Jürgen. 1995. "Reconciliation through the Public Use of Reason: Remarks

on John Rawls's *Political Liberalism*." *Journal of Philosophy* 92,109-131.

Hobbes, Thomas. 2002. *Leviathan*. Ed. by A.P. Martinich. Ontario: Broadview Literary Texts.

Hooks, Bell. 1987. "Feminism: A Movement to End Sexist Oppression." In *Feminism and Equality*, 62-76. Ed. by Anne Phillips. New York: New York University Press.

Kapust, Daniel. 2004. "Skinner, Pettit, and Livy: The Conflict of the Orders and the Ambiguity of Republican Liberty." In: *History of Political Thought* 25 (3), 377-401.

Kelly, Erin. 1999. "*Republicanism: A Theory of Freedom and Government*. Philip Pettit." In: *The Philosophical Review* 108(1), 90-3.

Knowles, Dudley. 1999. "*Republicanism: A Theory of Freedom and Government*. Philip Pettit." In: *The Philosophical Quarterly* 49(196), 415-9.

Kukathas, Chandran and Philip Pettit. 1990. *Rawls. A Theory of Justice and Its Critics*. Cambridge: Polity Press.

Kymlicka, Will. 1990. *Contemporary Political Philosophy. An Introduction*. Oxford: Clarendon Press.

Larmore, Charles. 1990. "Political Liberalism." In: *Political Theory* 18(3), 339-60.

Larmore, Charles. 1999. "The Moral Basis of Political Liberalism." In: *The Journal of Philosophy* 96(12), 599-625.

Larmore, Charles. 2003. "Public Reason." In: *The Cambridge Companion to Rawls*, 368-93. Ed. by Samuel Freeman, Samuel. Cambridge: Cambridge University Press, 368-93.

Locke, John. 1988. *Two Treatises of Government*. Ed. by Peter Laslett. Cambridge: Cambridge University Press.

Longino, Helen. 1980. "Pornography, Oppression, and Freedom: A Closer Look." In: *Take Back the Night: Women on Pornography*. Ed. by Laura Lederer. New York: William Morrow.

- Lovett, Frank. 2006. "Republicanism." In: Zalta, Edward (ed.) *The Stanford Encyclopedia of Philosophy*. URL = <http://plato.stanford.edu/entries/republicanism/>
- Lloyd, S.A. 1994a. "Relativizing Rawls." In: *Chicago-Kent Law Review* 69, 709-35.
- Lloyd, S.A. 1994b. "Family Justice and Social Justice." In: *Pacific Philosophical Quarterly* 75, 353-71.
- Lloyd, S.A. 1995. "Situating a Feminist Criticism of John Rawls' *Political Liberalism*." *Loyola of Los Angeles Law Review* 28, 1319-1344.
- Lloyd, S.A. "Self-interest, Citizen Virtue and Justice in a Liberal Democracy: A Rawlsian Reply to G.A. Cohen." Manuscript.
- MacIntyre, Alasdair. 1984. *After Virtue* (2nd edition). Notre Dame: University of Notre Dame Press.
- MacIntyre, Alasdair. 1994. "Critical Remarks on *The Sources of the Self* by Charles Taylor." In: *Philosophy and Phenomenological Research*. 54(1), 187-90.
- Martinich, A.P. "Against Equality". Manuscript.
- Mayerson, Denise. 1999. "Republicanism: A Theory of Freedom and Government. Philip Pettit." In: *The University of Toronto Law Journal* 49(1), 173-6.
- Miller, David and Michael Walzer (eds.). 1995. *Pluralism, Justice, and Equality*. Oxford: Oxford University Press.
- Munoz-Dardé, Veronique. 1998. "Rawls, Justice in the Family and Justice of the Family." In: [*The Philosophical Quarterly* 48\(192\)](#), 335-352.
- Mulhall, Stephen and Adam Swift. 1996. *Liberals and Communitarians* (2nd edition). Oxford: Blackwell Publishers.
- Mulhall, Stephen and Adam Swift. 2003. "Rawls and Communitarianism." In: *The Cambridge Companion to Rawls*, 460-487. Ed. by Samuel Freeman. Cambridge: Cambridge University Press.

- Nagel, Thomas. 2003. "Rawls and Liberalism." In: *The Cambridge Companion to Rawls*, 62-85. Ed. by Samuel Freeman. Cambridge: Cambridge University Press.
- Nagel, Thomas. 2006. "Progressive but Not Liberal. *Public Philosophy: Essays on Morality in Politics* by Michael J. Sandel." In: *The New York Review of Books* 53(9).
- Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.
- Nussbaum, Martha C. 2003. "Rawls and Feminism." In: *The Cambridge Companion to Rawls*, 488-520. Ed. by Samuel Freeman. Cambridge: Cambridge University Press.
- Okin, Susan Moller. 1987. "Justice and Gender." *Ethics* 16, 42-72.
- Okin, Susan Moller. 1989. *Justice, Gender and the Family*. New York: Basic Books.
- Okin, Susan Moller. 1994. "Political Liberalism, Justice, and Gender." *Ethics* 105, 23-43.
- Pateman, Carole. 1987. "Feminist Critiques of the Public/Private Dichotomy." In *Feminism and Equality*, 103-126. Ed. by Anne Phillips. New York: New York University Press.
- Pateman, Carole. 1992. "Equality, Difference, Subordination: The Politics of Motherhood and Women's Citizenship." In: *Beyond Equality and Difference: Citizenship, Feminist Politics, and Female Subjectivity*, 17-31. Ed. by Gisela Bock and Susan James. New York and London: Routledge.
- Pettit, Philipp. 1997. *Republicanism. A Theory of Freedom and Government*. Oxford: Clarendon Press.
- Pettit, Philip. 2002. "Keeping Republican Freedom Simple: On a Difference with Quentin Skinner." In: *Political Theory* 30(3), 339-356.
- Pettit, Philip. 2003. "Republicanism." In: Zalta, Edward (ed.) *The Stanford Encyclopedia of Philosophy*, Spring 2003, URL = <http://plato.stanford.edu/archives/spr2003/entries/republicanism> [This was the previous

entry on republicanism in the *Stanford Encyclopedia of Philosophy*]

Phillips, Anne (ed.) 1987. *Feminism and Equality*. New York: New York University Press.

Rawls, John. 1971; revised edition 1999. *A Theory of Justice*. Cambridge Mass.: Harvard University Press.

Rawls, John. 1979. "A Well-Ordered Society." In: *Philosophy, Politics, and Society*. 5th series, 6-20. Ed. by P. Laslett and J. Fishkin. Oxford: Oxford University Press.

Rawls, John. 1980. "Kantian Constructivism in Moral Theory: The Dewey Lectures 1980." In: *Journal of Philosophy* 77, 515-72.

Rawls, John. 1985. "Justice as Fairness: Political not Metaphysical." In: *Philosophy and Public Affairs*. 14(3), 223-51.

Rawls, John. 1993. *Political Liberalism*. New York: Columbia University Press.

Rawls, John. 1996. "Introduction to the Paperback Edition." In Rawls, John. *Political Liberalism*. New York: Columbia University Press.

Rawls, John. 1997. "The Idea of Public Reason Revisited." In *The University of Chicago Law Review* 64, 765-807.

Rawls, John. 1999. "Commonweal Interview with John Rawls." In: *Collected Papers*, ed. by Samuel Freeman. Cambridge Mass. and London: Harvard University Press, 616-22.

Rawls, John. 1999. *The Law of Peoples*. Cambridge Mass. and London: Harvard University Press.

Rawls, John. 2001. *Justice as Fairness: A Restatement*. Ed. by Erin Kelly. Cambridge Mass. and London: Harvard University Press.

Roberts, Dorothy E. 1995. "Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right to Privacy." In *Critical Race Theory: The Key Writings That Formed the Movement*, 384-426. Ed. by K.W. Crenshaw et al. New York: The

New Press.

Ruddick, Sara. 1989. *Maternal Thinking. Towards a Politics of Peace*. Boston: Beacon Press.

Sandel, Michael. 1998. *Liberalism and the Limits of Justice*, 2nd edition. Cambridge and New York: Cambridge University Press.

Sher, George. 1995. "Rights, Neutrality, and the Oppressive Power of the State." In: *Law and Philosophy* 14(2) Special Issue on Rights, 185-201.

Shih, Shu-Mei. 2002 . "Towards an Ethics of Transnational Encounter, or 'When' Does a 'Chinese' Woman Become a 'Feminist'?" *Differences. A Journal of Feminist Cultural Studies* 13, 90-126.

Skinner, Quentin. 1998. *Liberty before Liberalism*. Cambridge: Cambridge University Press.

Taylor, Charles. 1985. *Philosophy and the Human Sciences. Philosophical Papers 2*. Cambridge: Cambridge University Press.

Taylor, Charles. 1989. *Sources of the Self: The Making of the Modern Identity*. Cambridge Mass.: Harvard University Press.

Taylor, Charles. 1992. *The Ethics of Authenticity*. Cambridge Mass. and London: Harvard University Press.

Thomson, Judith Jarvis. 1971. "A Defense of Abortion." In: *Philosophy and Public Affairs* 1(1), 47-66.

Wall, Steven. 2007. "Perfectionism in Moral and Political Philosophy." In: Zalta, Edward (ed.) *The Stanford Encyclopedia of Philosophy*, Spring 2007, forthcoming URL = <http://plato.stanford.edu/archives/spr2007/entries/perfectionism-moral>

Walzer, Michael. 1983. *Spheres of Justice. A Defense of Pluralism and Equality*. New York: Basic Books.

Walzer, Michael. 1984. "Liberalism and the Art of Separation." In: *Political Theory* 12(3), 315-30.

Walzer, Michael. 1990. "The Communitarian Critique of Liberalism." In: *Political Theory*. 18(1), 6-23.

Walzer, Michael. 1994. *Thick and Thin. Moral Argument Home and Abroad*. Notre Dame and London: Notre Dame University Press.

Ward, Cynthia V. 1991. "The Limits of 'Liberal Republicanism': Why Group-Based Remedies and Republican Citizenship Don't Mix." In: *Columbia Law Review* 91(3), 581-607.

Weithman, Paul J. 1994. "Taking Rites Seriously." In: *Pacific Philosophical Quarterly* 75, 272-94.

Young, Iris Marion. 1987. "Impartiality and the Civic Public: Some Implications of Feminist Critiques of Moral and Political Theory." In *Feminism as a Critique: On the Politics of Gender*, 57-76. Ed. by Seyla Benhabib and Drucilla Cornell. Minneapolis: Minnesota University Press.

Young, Iris Marion. 1989. "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship." *Ethics* 99, 250-274.

Young, Iris Marion. 1990. *Justice and the Politics of Difference*. Princeton: Princeton University Press.

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